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KNOWLEDGE OF AND ATTITUDES TOWARD
GRADUATION PRAYER IN
OHIO PUBLIC SCHOOLS

DISSERTATION

SUBMITTED TO

The School of Education and Allied Professions

THE UNIVERSITY OF DAYTON

In Partial Fulfillment of the Requirements for

The Degree

Doctor of Philosophy in Educational Leadership

Nicholas Brandon Weldy A.S., B.S., M.S.T.

THE UNIVERSITY OF DAYTON

DAYTON, OHIO


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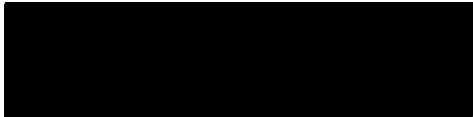
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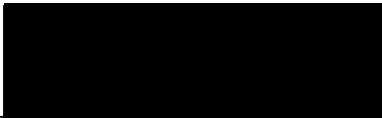
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KNOWLEDGE OF AND ATTITUDES TOWARD
GRADUATION PRAYER IN
OHIO PUBLIC SCHOOLS

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Prayer at public school graduation is a topic that has generated a great deal of controversy, judicial action, and academic commentary, but little empirical research. In light of the absence of research on attitudes toward and knowledge about the law concerning prayer at graduation, whether nationally or locally, this study investigated the knowledge and attitudes of superintendents in Ohio on this important topic. The study focused on superintendents because as chief academic officers in their districts, they both guide board policy and help to shape attitudes in their communities. As such, this study examines the knowledge, attitudes, and beliefs about school prayer and examines the current status of graduation prayer in Ohio schools.

The results of the study provide a descriptive picture of the current status of graduation prayer in Ohio and superintendents' knowledge and attitudes toward graduation prayer. In addition to the descriptive portion of the study, a chi-square was

conducted to assess if a relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more). The results of the chi-square were significant $\chi^2(3) = 21.42, p < .001$, revealing that a relationship does exist and the null hypothesis was rejected. Another chi-square was conducted to assess if a relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other). The results of the chi-square were significant $\chi^2(3) = 46.62, p < .001$, revealing that a relationship does exist and the null hypothesis was rejected. Both outcomes support that there is a relationship between both district size and district location, which influences the chance of a prayer being offered during graduation ceremonies.

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CHAPTER I

INTRODUCTION

Religion, education, and the law have long been intertwined throughout history. In the foundation, stabilization, growth, and downfall of many civilizations all three have played major roles. The Founding Fathers of the United States, who were well aware of the place of religion in the development of civil society, sought to recognize the symbiotic relationship necessary to allow the citizens of their young country to be able to have the legal right to both education and religious freedom. The U.S. Constitution and its first 10 amendments were penned, in part, as a guarantee of those rights.

The adoption of the First Amendment, including the Establishment and Free Exercise Clauses, as part of the Bill of Rights in 1791, have led to a fiery debate, as these two sometimes conflicting clauses regularly generate litigation. In fact, "Nowhere is the conflict between the Free Exercise and Establishment Clauses more apparent than in America's public schools" (McPherson, 1997, p. 393). The place of religion, particularly prayer in its many iterations, in the public marketplace of ideas, known as the American public schools, is a subject that is personal to many who see the exclusion of religion as tied to what they perceive as the moral decay of the country. Conversely, those who believe in applying the Jeffersonian metaphor, discussed below, calling for a "wall of

separation” between government and education maintain that prayer is constitutionally impermissible.

Prayer in public schools has been a topic where disagreement has fueled a great deal of litigation in the lower courts, culminating in suits heard by the United States Supreme Court. The first Supreme Court case involving prayer in public schools was *Engel v. Vitale* (1962). In *Engel*, the New York State Board of Regents composed a daily prayer to be used before the start of the school day in classrooms. Even though parents could opt out of having their children participate, the Court ruled in their favor, striking prayer down as unconstitutional and explaining that schools were viewed as an entity of the government. A year later, the Court heard companion cases that solidified the precedent against prayer in public schools. *School District of Abington Township v. Schempp* and *Murray v. Curlett (Abington)*, decided in 1963, prohibited Bible reading and prayer during the opening of the school day in Pennsylvania and Maryland respectively.

In *Engel* and *Abington*, the Supreme Court affirmed that daily prayer and Bible reading in the public schools violated the Establishment Clause. Further, in *Abington*, the Court also set into motion what would eventually become the first two prongs of the tripartite *Lemon* Test when it asked two questions that examined the primary effect of the policy and if there was an advancement or inhibition of religion (*Abington*, 1963). The *Lemon* Test has been used in the vast majority of cases involving prayer and other religious activities in public schools. The questions raised in these early cases would become an important foundation to numerous Establishment Clause suits that are discussed in chapter 2.

As the contentious issue of prayers in schools plays out in light of public opinion polls, it is wise to keep in mind that the thoughts of Justice O'Connor who stated "It is true that many Americans find the Commandments in accord with their personal beliefs. But we do not count heads before enforcing the First Amendment" (McCreary, 2005, p. 881). The trick, then, is to protect the rights of someone on both sides of this thorny and convoluted question, namely those who oppose and support school-sponsored prayer in public education.

Litigation that began with *Engel* (1962) and *Abington* (1963) evolved into a similar situation 30 years later in *Lee v. Weisman* (1992). Although prayer was at issue in *Lee* it was part of a public school graduation ceremony rather than during the academic day.

Eight years later, the Supreme Court chose not to revisit the constitutionality of prayer at public school graduation but did prohibit it at a high school football game, and by extension, other extracurricular activities (*Santa Fe Independent School District v. Doe*, 2000).

Since *Engel*, the Supreme Court and the lower courts have consistently struck down school-sponsored prayer in varying forms. Although somewhat dated, Gordus suggested that "public schools across the United States will conduct graduation ceremonies. Many of these graduation ceremonies will contain an invocation, a benediction, or both. Some of these graduation invocations/benedictions will violate the Constitution of the United States" (1994, p. 653). Even though Gordus' statement was made shortly after *Lee*, it begs the question about current graduation practices in Ohio, as to whether school boards have adapted their policies and practices since Gordus made

this statement. Through previous decisions, the courts have made it clear that school-sponsored prayer is unconstitutional; even so, is it plausible that some school boards continue to pursue these activities?

The issue of school prayer is largely judicially settled but lacks the social science research necessary to understand the impact of litigation on school systems in Ohio. As such, school boards and officials have had to reconsider their actions and policies, in essence, considering what they do with regard to prayer at graduation ceremonies as a result of these cases. To date, there has apparently not been a research study investigating the status of graduation prayer in Ohio, the knowledge levels of superintendents in relation to school law, or any attempts to construct a knowledge base of how the litigation has influenced Ohio school systems. In light of the dearth of research, the objective of this study is to develop a foundation on which administrators and researchers may understand the legal status of prayer at graduation and advance this investigation further.

Statement of the Problem

The purpose of this study is to analyze information while developing a profile of the knowledge and beliefs of school superintendents in Ohio in relation to graduation prayer. This investigation evaluates the extent to which prayer is included in high school commencement ceremonies. Further, the study examines the level of knowledge and beliefs of district superintendents about school-sponsored prayer in light of the vast amount of litigation that has transpired on this contentious issue.

This research study has three main objectives. The first objective is to document the current level of superintendents' knowledge of litigation involving religion and the public schools. The second objective is to explore and describe patterns that exist in the

demographic data by applying quantitative methods to develop a profile of graduation prayer in Ohio and superintendents' knowledge and beliefs in relation to graduation prayer. The final objective of this investigation is to report the data and to recognize trends that lend themselves to developing future research questions that may help further develop this topic.

Litigation concerning school-sponsored prayer, starting with *Engel*, has clarified whether prayer is legally allowed in Ohio schools and across the United States. Prior to this study, the extent to which Ohio's school superintendents understood the legal boundaries surrounding prayer during commencement ceremonies was unknown. The knowledge and beliefs of superintendents about prayer are central to possible policies and practices they establish in their districts because superintendents help to shape local policies.

Superintendents, in conjunction with boards of education, must ensure that the constitutional rights of all students are to be protected by school policies. In order to ensure that these rights are protected, school officials must understand the Supreme Court's stance on the issue. The Justices were clear on this point in *Tinker v. Des Moines Independent Community School District* (1969) when the Court stated "that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate" (p. 506). Accordingly, boards and education officials, led by superintendents, not only need to develop policies that protect the rights of students from what could be seen as governmental influences, they must also ensure that students continue to have freedom of speech. Further, "the Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of

religion, showing neither favoritism toward nor hostility against religious expression such as prayer” (U.S. Department of Education, 2003a). Unfortunately, from the decisions in numerous Supreme Court cases on an array of topics, what it means to “be neutral” is anything but clear. Knowledge of the extent to which students’ rights might be violated by policies related to school-sponsored prayer is important for both district and public policymakers to more thoroughly understand the potential ramifications of their actions.

Given the lack of judicial clarity, the researcher can use the data gathered in this study to develop a sketch of how schools view the rights of students in regard to the court decisions. Since local school boards are at risk for litigation if they promulgate policies regarding school-sponsored prayer that are outside the legal boundaries set by the Supreme Court, perhaps boards of education can use these results to develop policies to avoid litigation.

This study also seeks to enlighten educational leaders with regard to their legal obligations when considering what to include in commencement exercises. The questions in the survey can guide administrators to reflect on their own district policies regarding school prayer as well as their own beliefs and knowledge levels regarding religious litigation. This study conducted a statewide examination of Ohio’s response to almost 50 years of litigation since *Engel* in both the Supreme Court and the lower federal courts involving school prayer.

Research Questions and Study Objectives

This study investigates the current graduation prayer practices in Ohio public schools while collecting data on the current knowledge and beliefs about prayer at commencement ceremonies by superintendents. In other words, the study asks about the

extent to which the Supreme Court cases and ongoing litigation have impacted prayer practices at high school graduation ceremonies.

The study looks to examine two related research questions:

1. What relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district size (1-1000 vs. 1001-2000 vs. 2001-3000 vs. 3000 or more)?
2. What relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other)?

These questions result in the following hypotheses:

Null Hypotheses

1. H_{01} = No statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more).
2. H_{02} = No statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other).

Research Hypotheses

1. H_{a1} = A statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more).
2. H_{a2} = A statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other).

To examine these questions the study has three main objectives:

Objective 1: To document the current level of Ohio superintendents' knowledge of modern litigation involving religion and the public schools.

Objective 2: To explore and describe patterns by applying quantitative methods to develop a profile of graduation prayer in Ohio.

Objective 3: To report and analyze the data while recognizing trends that lend themselves to developing future research questions.

Significance of the Study

There are three major ways in which this study is a significant contribution to the knowledge base in educational leadership and school law. First and foremost, this study is noteworthy because it provides a cross-sectional look at how prayer is understood and practiced at graduation ceremonies across Ohio. Until this study was conducted, there was no evidence in the research literature of a study of this size with the sole purpose of describing the current state of prayer in the State of Ohio. Instead, most of the research database involves discussion of the outcomes of litigation and a scholarly debate of the political and social impact of the decisions rather than examining how these decisions impact school districts and the communities they serve.

Second, the study evaluates the evidence of a relationship between the size and type of districts and whether the boards permit prayer at graduation. These data are insightful because they allow identification of possible areas of concern in respect to honoring the rights of the school district's students. The remainder of this section expands on these points of significance while illuminating their importance to public schools and is further addressed in chapter 5.

Third, religion is an important aspect of American life. In light of this fact, school administrators need to be aware of what is going on in the courts in relation to religion and public education. According to the First Amendment, since it is a fundamental

freedom to exercise the religious worship of choice, educational leaders must be aware of, as well as sensitive to, the needs of their communities. As community demographics continue to change across the United States, school districts will also reflect these changes in the morals, traditions, and religious beliefs that students bring to the schoolhouse steps each day.

Even though modern judicial decisions have built a “wall of separation” between church and state, religion remains a major part of the culture in many communities and is still hotly contested, as witnessed by the sheer number of cases involving schools and religion. Every day, parents across this nation entrust the education of their children to public school systems. These students vary in age, race, ethnicity, and religious beliefs; all students bring their own morality, values, and beliefs to the school. The Constitution guarantees personal rights that must be respected as well as understood by school boards and the superintendents who lead them. As reflected by the attitudes uncovered in the study, high school graduation ceremonies are an example of when the community and the school district become intertwined in an important educational rite of passage.

Graduation is a time when many members of the public and the surrounding communities are present to attend an important formal school ceremony marking a “transition from adolescence to young adulthood”¹ (Lee, 1992, p. 639). The attendees often represent numerous races, ethnicities, religions, and belief systems; school board officials must be careful not to violate any individuals’ constitutional rights at this time of celebration. While some believe that prayer should bring people together, the history of litigation on the topic shows that this is a lofty, seemingly unattainable goal since cases reveal that it essentially causes the opposite result, oftentimes accompanied by

acrimonious debate, so that a party must file a suit pseudonymously to avoid harassment in the community as witnessed in *Santa Fe Independent School District v. Doe* (2000).

As noted previously, no other study has obtained comprehensive data pertaining to school prayer during commencement ceremonies in public schools in Ohio. The few doctoral studies that have examined graduation prayer in Missouri and Pennsylvania did not survey superintendents specifically or conduct an in-depth examination of graduation prayer practices.

Not only have historical studies neglected this important element of American life, but it appears to have been also ignored by educational research studies. There is ample evidence of discussions on the case law or the history of why a precedent was set, but little in relation to examining the actual impact of the decisions on boards, their superintendents and local communities.

The absence of empirical research involving prayer at school graduation ceremonies in Ohio and elsewhere is reflected in the minimal amount of research conducted and published in this subject area. In fact, most professional journals contain opinions or updates of case law, not exploratory research on the actual impact and implementation of the judgments. Thus, there is little follow-up research conducted after judicial opinions are handed down.

Religion is an important factor that is intertwined with many aspects of public schools. Accordingly, it is important to comprehend how the impact of judicial decisions affects school systems and their policies and whether superintendents and boards are following these decisions. Educational leaders who develop policies must be better informed of the current state of religious prayer during graduation ceremonies and be

able to read current research while thinking intelligently to develop acceptable policies in support of student rights.

With the rise in litigation that school boards face, it is becoming increasingly important to realize the significance of not violating the rights of individuals. By examining the possibility of a relationship between a superintendent's knowledge of school law and the probability of an unconstitutional method of permitting prayer, school boards may realize the need to develop policies to ensure that the rights of all at commencement ceremonies are recognized.

Some educational leaders and school boards seem to lack an understanding that the Supreme Court decisions must be adhered to under the penalty of law. Yet, many citizens know of boards that refuse to follow these cases (Harrison & Gilbert, 1992). So, why do these boards choose not to develop appropriate policies forbidding school-sponsored prayer? Is it to pacify the majority opinion in the community? Is it related to where districts are located? Is it due to the lack of foundational knowledge on school law by district officials? Is it because no community members have complained yet that these policies offend them? Without a formal study there is no way to determine the beliefs of superintendents and how they will influence the policies they present to their respective boards of education.

This study developed a cross-sectional look at the current knowledge base of superintendents in Ohio and its implications by collecting demographic information about each district surveyed. Therefore, the data were gathered in order to develop an understanding of how graduation ceremonies are conducted with respect to prayer and to determine the level of knowledge of current superintendents. By doing so, the

investigator hoped that the data provided valuable insights that can help researchers and administrators across Ohio to better understand situations where infringements of rights could take place and prevent them, avoiding costly litigation while maintaining an image of religious respect in the community.

Methodology

This research study is a descriptive, ex post facto design used to develop a profile illustrating the status of school prayer in Ohio. In other words, the study defines the extent to which Ohio's school superintendents understand their legal boundaries, as established by judicial precedent, surrounding prayer during commencement ceremonies. Superintendents' knowledge and beliefs about previous litigation are central to policies and practices they recommend to their school boards. In this regard, since the board of education members depend, at least in part, on their superintendent to understand and make recommendations in accordance with the law, it is necessary to focus on the roles of superintendents and their knowledge. It is thus important for both boards and public policymakers to more thoroughly understand the extent to which policies related to school-sponsored prayer might violate citizens' rights.

A researcher-developed survey instrument (Appendix A) was electronically distributed to gather data for analysis from all school districts in Ohio. The survey instrument was sent to three experts in the area of school law and religion for review. These experts were Ralph D. Mawdsley, J.D., Ph.D., Roslyn Z. Wolf Endowed Chair in Urban School Leadership, College of Education and Human Services, Cleveland State University, Cleveland; Martha M. McCarthy, Ph.D., Chancellor's Professor and Chair, Educational Leadership and Policy Studies at Indiana University Bloomington; and

Allan G. Osborne, Jr., Retired Principal, Snug Harbor Community School, Quincy, MA; their feedback can be found in Appendices B, C, and D, respectively.

The data collected from this survey contained descriptive information about the districts in addition to portraying the current state of prayer in Ohio schools during the graduation invocation or benediction. The data were analyzed quantitatively, using *Statistical Package for the Social Sciences* (SPSS) version 13, to develop a profile of the status of graduation prayer in Ohio. A well-developed profile is the evidence that is provided to enlighten school leaders as to their legal obligations when considering including prayers in commencement exercises. The profile includes three main areas: demographics of districts surveyed, current graduation practices, and the superintendents' knowledge and beliefs in relation to school prayer and litigation.

Assumptions

The study makes five assumptions. The first assumption was that the self-reported answers obtained from the survey are sufficiently free of error and are an accurate estimation of knowledge, beliefs, and practices about school prayer at commencement ceremonies in public school districts across the State of Ohio.

The second assumption was that school superintendents are the key knowledge holders in school districts, in accordance with the understanding that they are legally responsible for the business and policies in their districts, and are the proper individuals to survey in order to obtain the information needed by this study.

The third assumption was that school superintendents surveyed are certified or licensed educational professionals in the State of Ohio.

The fourth assumption was that since the litigation on school prayer has had an impact on the schools, it warrants a study to examine the extent to which school boards have been influenced.

The fifth assumption was that the answers were accurate and complete when they were submitted via the electronic survey over a 2-month period in 2007.

Delimitations

The study includes the following six delimitations. The first delimitation is that some school superintendents did not participate in the study.

The second delimitation is that only public schools (K-12) in the State of Ohio are included in this study. This study was restricted to public schools because officials in some non-public schools allow and encourage prayer at graduation and during other school-related activities.

The third delimitation is that the surveys were electronically sent only to school superintendents since they are ultimately responsible for graduation ceremonies in their districts.

The fourth delimitation is that the study is limited by the time and date of collection and analysis of the surveys, which occurred in 2007. While new cases are constantly being litigated, there are currently, as of 2011, no related cases on the Supreme Court's docket in relation to school prayer. New litigation or changes in the composition of the Court may produce differing regulations in future law; therefore, this study only looked at the time period covered when the superintendents completed and returned the surveys in February 2007.

The fifth delimitation is that the addresses used to mail electronic surveys to district superintendents were obtained from the Buckeye Association of School Administrators (BASA) database. The accurate distribution of surveys depends on the accuracy of this database. While BASA does not guarantee the accuracy of this database, it is the most comprehensive source available to survey the appropriate audience.

The sixth delimitation is that the researcher used Supreme Court and lower court cases for the research section. Further, for simplicity and conciseness, the researcher examined the cases that have had widespread impact on the topic at hand. Since state constitutions vary greatly, the interpretation of such by the state level courts is beyond the scope of this study. Cases at the state level have been used sparingly throughout the study and only when they provide a broader foundation to the study as a whole.

Dissertation Outline and Summary

The first chapter reviews the background of the study while outlining the problem that is addressed in the subsequent chapters. It also explains the research questions driving the study and the parameters that provide the foundation for the remaining dissertation. Further, the chapter addresses the methodology, assumptions, limitations, and delimitations of the study.

The subsequent chapters build on the foundation laid by chapter 1. Each chapter provides a necessary portion of the entire study and works to unite the research into one coherent document.

Chapter 2 is a historical and legal overview of the litigation that has brought this topic to the point of being studied. It outlines the related history prior to the founding of the United States of America and up until the present. The bulk of the chapter examines

landmark cases. The second chapter mainly examines the appropriate Supreme Court cases that establish a legal foundation to form the basis of this study and important litigation in the lower courts.

Included in the description of the cases are the input from authors who analyzed the outcomes of court cases or commented on their impact. The authors help to establish another viewpoint that is well worth mentioning in a study such as this. With a significant amount of information in this chapter, it is important to establish that its overall essence is to understand the legal history of school prayer, explore where the courts have handed down judgments, and examine how they have influenced the evolution of religion and schools across the country.

Chapter 3 explains the study's research design by outlining the hypotheses, the participants, and the instrument used in the data collection. The chapter also covers the data collection and statistical analysis. Overall, the chapter provides a concise summary of the study's statistical methodology.

Chapter 4 reports the results of the study. It is here that the demographic data from the study are organized and listed in table form followed by written descriptions. Each table directly relates to a question on the survey and summarizes the submitted responses. The chapter is outlined in relation to the questions of the survey. From the survey, the researcher includes a chart that was created using the software package *Statistical Package for the Social Sciences* version 13 (SPSS) illustrating the results from the population that was surveyed. The data listed here are explained in chapter 5 of the study.

The final chapter, chapter 5, explores the findings resulting from the study. Chapter 5 focuses on recommendations and conclusions as well as a deeper exploration of key statistics from chapter 4. This chapter gives life to the data collected in chapter 4 by providing a platform from which another investigator can begin to expand the exploratory research conducted in this study.

CHAPTER II

REVIEW OF RELATED RESEARCH AND LITERATURE

Introduction

The chapter reviews case law and academic literature in relation to prayer in public schools with the examination of litigation forming the major focus. There is not a formal literature review section in chapter 2. Instead, literature is discussed when relevant to the appropriate court cases being discussed.

The relationship of religion and public education has generated thousands of cases and seemingly countless professional articles on the decisions. For this study, the author chose to examine cases and articles with a direct bearing on the topic at hand. Chapter 2 begins by examining religion in the early United States, religious issues in the schools, and their impact on the communities and citizens they serve. The chapter further reviews cases involving schools and religion as the young nation began to define the boundaries between these two important elements. More specifically, this review is partitioned into four major sections.

The first section, the historical literature review, describes the importance that religion has played in the development of the American public school system. This part

includes supporting history and early laws from the settling of the Pilgrims until the signing of the Constitution of the United States in 1787.

The second section of this chapter includes the development of law and traditions of public schools from after the signing of the Constitution until the landmark decision in *Lee v. Weisman* in 1992, the first Supreme Court case addressing prayer at graduation. This section also includes modern legal precedents which provide the theoretical base of this portion of the study. In addition, the second section constructs a chronological chain of cases decided prior to *Lee*.

The third section of this chapter reviews the background, development, and litigation that transpired since *Lee v. Weisman*. This section is vital in understanding the impact that the courts have had on prayer in schools and, ultimately, the public who attend commencement ceremonies.

The last section of this chapter examines issues and post-*Lee* cases. This section also provides information on why it is vital for superintendents to have a working knowledge of case law as well as demonstrating the importance and contributions to the knowledge base made by this study. Together these four sections provide insight into the historical role of religion in American schools, the legal legacy that has developed prior to more modern court cases, and how this jurisprudence influences superintendents, their districts, and the communities.

History of Schools and Religion

In the early days of American education, the majority of schools received funding and support from the local communities. Many of these communities had strong religious ties and encouraged a religious focus in local schools and their curricula. This unwritten

practice of including religion and prayer in the schools continued for almost 200 years before it was challenged in *Engel v. Vitale* in 1962.

Much of the Supreme Court's analysis in *Engel* revolved around the inclusion of prayer throughout American history as well as the role it played in early schools. The holding in *Engel* became a landmark. Yet, further litigation would be required in order to dissect the complex issue of school-sponsored prayer. Although *Engel* was instrumental in examining school prayer, it is essential to look further back into American history to better understand the development and intricate relationship between religion and schools.

In order to understand thoroughly how religion has played a part in the founding and development of American schools, one must look back to events that took place in Great Britain, in addition to other European countries, hundreds of years earlier. Religious persecution, among other factors, coerced countless people to flee their native lands and arrive in the New World where individuals could practice their religions freely. A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches:

The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one

shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. (*Everson*, 1947, pp. 8-9)

Throughout Europe, those who failed to accept the religion of the King were usually made to feel uneasy and were ultimately badgered or beaten either into submission and acceptance or to the point where they were willing to risk the trans-Atlantic trip to the New World to maintain their beliefs and traditions. Even members of English Parliament had to follow the rules of religious tolerance as all had to show proof that their beliefs were similar to those of the King (*Kelley*, 1984).

As these religious groups traveled to the New World, they formed pockets of similar ethnicities and religious beliefs (*Bishop*, 1976). While these communities were usually based on religion, specific denominations had little patience for others of differing faiths, enforcing strict policies based on nativism, despite themselves fleeing religious persecution (*Hoffman*, 1964). The difficulties that these religious groups faced increased steadily as harsh winters and scarce supplies brought death and sickness on many. Despite the presence of these hardships, religious beliefs between the members of these young communities became their mainstay in an ever-changing and unwelcoming world. The Bible became the book that early, literate Americans in the 17th, 18th, and 19th centuries would know and apply to their daily lives. In fact, the endeavors of early colonists reflected this as churches began to arise out of the vastness of the early American forests (*Bellah*, 1975).

Once the churches were constructed, communities turned their focus to the education of their children, an activity which was traditionally conducted in homes by mothers. The educated population of early America realized that there was a need to focus on a more formal standard for the education of their children. These individuals realized the need for higher education to train the future leaders as well. One such institution that was founded early in American history was Harvard University.

Harvard University, established in 1636, was one of the educational institutions supported by the early leaders of the Massachusetts Bay Colony. In the university, the primary focus was religiously based. Between 1642 and 1689, 180 of the 368 graduates from Harvard became clergymen with the 42 others becoming governors, counselors, judges, and government officials (Spring, 1986, p. 9). Each of these governmental positions had a direct or indirect role in influencing policy and possibly working to help develop schools.

As villages and towns increased in size and society became more complex, communities became aware that formal schools needed to be developed to help educate the youth. Consequently, "in the North American colonies in the seventeenth century, the primary purpose of education was to maintain Protestant religious beliefs and ensure social stability" (Spring, 1986, p. 1).

At first, these early schools were loosely organized institutions that depended on the contributions of wealthy patrons or tuition-based systems. Some schools relied on everything from liquor and marriage licenses to land donations and ferry tolls to provide needed revenues to continue their fledgling existence (Spring, 1986). Few teachers had

formal education and those who did were usually educated by church leaders in seminaries which reinforced the inclusion of religion in curricula.

The Massachusetts Law of 1642 was the first written enactment in North America to mention the “neglect of parents and masters in the training of children in learning and labor” (Spring, 1986, p. 2). This educational “neglect” came to a climax 5 years later when, in 1647, the education of early American youth took a leap forward.

The Massachusetts Bay Colony enacted a law in 1647, known as the “Old Deluder Satan” law (Massachusetts General Laws Ann. 76 § 1), a title derived from its opening words, to organize schools and arrange for the payment of teachers. This early law established the requirement to initiate and fund schools to enhance the level of instruction in towns with more than 100 families. Since this law was theological in nature, it meant for the schools to be religious. The purpose of the law was to educate the community’s youth in order to avoid perceived eternal damnation. In the following years, most of the remaining colonies enacted similar laws for the education of children. These schools became aligned with churches. As a result, in many towns and villages, churches and schools were located in the same building with local preachers having dual responsibilities at the pulpit and at the blackboard, depending on the day of the week and the audience they were addressing.

The textbooks in early American schools were based on early primers “that were originally published in England, beginning in the fifteenth and sixteenth centuries, to provide Christian instruction for children. Early editions included the alphabet, ‘The Lord’s Prayer,’ ‘The Hail Mary,’ and the Ten Commandments” (Spring, 1986, pp. 4-5). Major early American trading and cultural centers such as Providence, Rhode Island, had

free schools that were typically run by local churches for orphans or parents who were unable to provide their children with a formal education (Hoffman, 1964). In most communities, education was available for those who accepted the religious faith of the community.

From the time of the early colonists until the day the United States was formally founded by the Constitution, religion had been present in many aspects of community life, particularly in schools. As schools were being built across the colonies, mainly due to the laws first established in Massachusetts, influential men secretly met to discuss the dissolution of British control and the development of a sovereign nation. These daring men worked to write and refine the Declaration of Independence, and later, some of these same individuals would develop the Constitution of the United States of America, a document that would have ramifications on education until the present day even though education is not expressly mentioned in its provisions. Interestingly, many of these men were devout Christians of varying denominations who expressed their beliefs in God in their speeches and their writings (Bishop, 1976; Boorstin, 1958; Hawke, 1976; Morris, 1973).

By the end of the Revolutionary War, there “were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five” (*Engel*, 1962, p. 429). The states varied between religious denominations but were usually associated with one of the main denominations, such as Anglican/Episcopalian, Congregational, or Roman Catholic, primarily depending on the population of their major urban centers.

Regardless of whether it was recognized at this point, religion had become a cornerstone in the development and advancement of the nation and its schools as evidenced by the firm foundation of state churches and their influence on civic leaders. Throughout the following years, the constitutionality of the relationship between education and religion in public schools became more tenuous as citizens began to question the purpose of these ties.

History of Litigation in School-Religion Issues

The Constitution created a republican form of government where all were supposed to have been created equal, a goal that, sadly, did not apply to everyone. To some, this was a highly utopian thought and a lofty goal to say the least (Dahl, 2003). The Founding Fathers themselves were mostly religious men “who believed devotedly that there was a God and that the unalienable rights of man were rooted in Him” (Abington, 1963, p. 213). Davis (1991) reported that Washington, Adams, Jefferson, and Madison all included religious benediction in their inaugural speeches. Yet, these men differed on their beliefs of the relationship of established government and religion.

The Constitution reflected a meld of many political philosophies from other governments such as the British, the Venetians, and even the Romans (Dahl, 2003), representing a variety of ideals. As evidenced by its amendments since its signing, the Constitution was not perfect. Changes were inevitable and religious issues were the first to arise, driven by the numerous states as evident in the Bill of Rights. These concerns attracted the attention of the federal government at the congressional conventions.

The Constitution, developed by a majority of religious men, was oddly void of any references to God or to any other religious entity (Davis, 1991; Hawke, 1976). The

states saw this as an avoidance of religious issues and questioned what their individual roles would be. As noted earlier, many jurisdictions had already developed state-associated churches and saw the conventions as an opportunity to endorse their beliefs.

The Founding Fathers shared many attributes such as leadership, success, and perseverance. However, the one quality that they did not share was that of a common religious denomination. Further, the Founders feared that a single federally decreed religious sect would be established. The Founders had witnessed how religious entwinement with government caused great distress for many of its citizens who had fled from England and other countries where religious persecution was common. While many religious minorities viewed state establishments of religions as a potential problem, others feared that due to a lack of religious freedom in the language of the Constitution, it left an opening for individual interpretation by the courts.

The states took a leading role by including many statements in their own constitutions that eliminated religious establishments. North Carolina, New Hampshire, New York, and Virginia all addressed the legality of establishing formal state religions, eventually electing not to do so (Davis, 1991). Language from the state constitutions would eventually become the precursor to the Establishment Clause in the First Amendment.

As the states ratified the Constitution, it became evident that the issue of religion at the federal level had to be addressed. As the Founding Fathers gathered to consider constitutional amendments, representatives from each state offered proposals that were supportive of their own objectives and ideals. Months of debate ensued as the leaders tried to develop a concise and coherent amendment that would be acceptable to all.

Once the Constitution was ratified in 1787, replacing the Articles of Confederation, James Madison, who was initially opposed to a Bill of Rights, proposed formal amendments in relation to religious establishment and practice to the first Congress of the United States in 1789 (Davis, 1991). Madison's true desires were to eliminate all state and federal establishments of religion, without actually defining the term, even though some states had already developed state-established churches and vehemently defended them.

The States finally ratified a Bill of Rights that, in 1791, was added with the Constitution and which directly addressed religion. Later battles over the interpretation would finally be resolved, at least on paper but ultimately not in the courts, and the product would be the current Establishment and Free Exercise Clauses of the First Amendment to the Constitution.

The First Amendment was a victory for all as the potential shackles of a government-sponsored religion were finally eradicated. Interestingly, throughout the debate, discussion, and frustration over the Bill of Rights, education was not much of a thought in many of the framers' minds when they discussed the Establishment Clause as education had yet to be a federal mandate and so was left to the states under the Tenth Amendment (McCarthy, 2000, p. 123). In the end, it would be left to the judiciary to refine the parameters of the First Amendment Religion Clauses as schools would become better-defined and the federal government would become more interested in the management of the schools, despite being a state responsibility.

In order to understand the importance of the adoption of the Bill of Rights in relation to this study, it is necessary to examine the religion clauses of the First

Amendment to the Constitution. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" was a statement that brought hope to many who themselves, or their past relatives, had suffered religious persecution at the hands of the ruling majority. The goal of this amendment, and the purpose of the Founding Fathers, was to protect the religious rights of all citizens of the United States of America.

The lessons of the First Amendment are as urgent in the modern world as in the 18th century, when it was written. One timeless lesson is that, if citizens are subjected to State-sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. (*Lee*, 1992, p. 592)

After substantial growth in the 18th century, public schools began to emerge in the newly formed nation at the beginning of the 19th century (*Pratte*, 1973). Although attendance was not mandatory, most children attended school in the lower grades to become educated in reading and writing. A majority of these students would return to their homes once they became literate as their labor was needed to help their families to survive and prosper.

In some schools, the main text remained the Bible, which was used for multiple purposes in the education of children, even serving as a tool for discipline if unruly students needed behavioral adjustments. Once again, Massachusetts made a decisive move to build on the foundation of education it erected 200 years earlier with the enactment of the Old Deluder Satan Law (Massachusetts General Laws Ann. 76 § 1).

Massachusetts enacted the first compulsory attendance law in the United States in 1852. This law required children to attend public schools administered by religious officials even if they were not members of the particular sect that operated the schools. These early schools were majoritarian insofar as the values they taught were those espoused by those funding the schools, namely liberal Protestants (James, 1991). In other words, those who had the money could set school curricula. In many locations, these were still community churches.

Up until 1852, few citizens spoke out publicly against the common practice of prayer before, during, and after the school day. One of the earliest statements specifically directed at school prayer was in 1853 from Elisha R. Potter, Rhode Island Commissioner of Public Schools (Flaherty, 1971, p. 75). When he was asked to decide whether a teacher could teach prayer in his classroom, Potter informed the committee that “while he believed that moral instruction should be given in the public schools, this in no way should be construed to mean that he favored the inclusion of prayers or teachings peculiar to a particular religious sect or denomination” (Flaherty, 1971, p. 75). Further, Mr. Potter went on to state that prayers, in some instances, could “be made to express the sectarian peculiarities of the person who makes the prayers” (Flaherty, 1971, p. 75). This same basic language would be paraphrased and applied to a similar situation that would face the Supreme Court 139 years later in *Lee v. Weisman* (1992).

The evolution of American schools revealed periods of virtuosity and stagnation. Public schools helped the nation to grow both academically and economically, remaining a cornerstone of society and a place, besides the home, where students could learn values.

Few citizens challenged the right of others to practice their religious views and the majority of Americans tolerated the worship practices of others without prejudice.

In the beginning of the 19th century, as people began to question the relationship of schools and religion, they sought the advice of the courts to remedy the situations that made them uneasy. By 1860, most states outside of the South had developed, or were in the process of establishing, free public schools for students. Attendance was still not mandatory in many jurisdictions, but as states began to follow the lead of Massachusetts, the courts became involved with the rights of those who chose to attend. As more schools began to appear, and compulsory attendance became more commonplace, the strain between religion and public education would become more of a focal point in litigation.

Cantwell v. Connecticut

Litigation over religious issues, which has gone from being a fairly non-existent issue in the 1800s to one that is complex today, is shown in the great number and variety of religion cases decided over the better part of the last century. For the first 150 years of early American history, the Establishment Clause applied only to the federal government, but with *Cantwell v. Connecticut* in 1940, the Supreme Court applied the First Amendment to the states through the Fourteenth Amendment.

In *Cantwell*, a unanimous Supreme Court invalidated registration regulations that state officials sought to impose on Jehovah's Witnesses who wished to distribute religious materials as they went door-to-door. The Court decided that the regulations violated the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment because it denied the plaintiffs their rights to religious freedom and to speak freely. *Cantwell* opened the door to allow state-level disputes

dealing with various aspects of religion in American public schools to be heard in federal courts because of the nexus to the constitutional issues.

The Evolution of Establishment Clause Litigation

Since its judgment in *Everson v. Board of Education* (1947), the Supreme Court has addressed more cases dealing with the religion clauses of the First Amendment's Establishment Clause than any other area of school law (Russo, 2009). Before the Court resolved the landmark case of *Brown v. Board of Education* (1954), the Court had heard few cases impacting educators (Russo & Stewart, 2001). Yet, religion is now such an important subject that, arguably, 4 of the top 10 education law cases in the history of United States case law have dealt with the conflict of religion and education (Cambron-McCabe, Russo, & Underwood, 2000).

As the courts began to see more litigation on religious issues, the Justices started outlining various guidelines the majority used to determine the constitutionality of the issues. Some of these guidelines began to be used by the lower courts to help decide the cases that were brought before them. Of these tests, the ones addressed in this chapter are the most commonly used, the *Lemon* Test, Endorsement Test and the Psychological Coercion Test.

Lemon v. Kurtzman

Lemon v. Kurtzman stemmed from issues dealing with the purchase of secular services for students in religiously-affiliated non-public schools in disputes arising from Rhode Island and Virginia. In *Lemon*, the Supreme Court developed a three-pronged test, labeled as the *Lemon* Test, to evaluate whether the Establishment Clause had been violated.

In creating the *Lemon* Test, the first two prongs of the *Lemon* Test were established in *School District of Abington Township v. Schempp*, *Murray v. Curlett* (1963), where the Court affirmed that daily prayer and Bible reading in the public schools violated the Establishment Clause. In *Abington*, the Court set into motion what would eventually become the first two prongs of the *Lemon* Test when it asked two important questions that examined the primary effect of the policy and if there was an advancement or inhibition of religion (*Abington*, 1963). The Court also looked at the purpose and effects tests from *Everson* and the excessive entanglement prong from *Walz v. Tax Commission of the City of New York* (1970). In *Walz*, the Court upheld New York State's practice of providing state property tax exemptions for church property that is used in worship services, finding that the practice did not create an impermissible entanglement.

According to the *Lemon* test:

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the statute must not foster "an excessive government entanglement with religion." (*Lemon*, 1971, pp. 613-614)

The three parts of the *Lemon* Test would become a set of measures that could be used to determine if a violation of the Establishment Clause existed. This standard became a difficult guideline for the Supreme Court to apply. Difficulties arose at least in part because it was first used in a case involving aid to religiously-affiliated non-public schools but has since become a kind of "one size fits all" test in reviewing disputes over

prayer at public school graduation ceremonies and a wide array of other cases dealing with religion and public education. In addition, the subjectivity of each Justice in determining their beliefs on how issues could be interpreted as violations or in accordance with each prong of the test also presented challenges. The *Lemon* Test became a tool that would be marked for modification in future cases.

The *Lemon* Test was hardly the first time where the Supreme Court developed a set of standards in an attempt to aid school boards, but it was unique in that educators could evaluate if their policies were in violation of the Establishment Clause by examining its three prongs. Although the test was meant to be a guide, it quickly was seen to lack a firm sense of clarity and has continued to cause frustration and differing opinions in the lower courts because of its broad guidelines (Russo, 2009).

At the same time “separationist doctrine governed Establishment Clause litigation involving schools through the 1980s and was bolstered by applying the tripartite test articulated in *Lemon v. Kurtzman*” (McCarthy, 2000, p. 128). The Establishment Clause became the primary path for school religion litigation cases presented to the Supreme Court. From 1971 through 1992, the Supreme Court has debated and handed down decisions in 31 Establishment Clause cases (Lee, 1992, p. 603). During this time, only one case, *Marsh v. Chambers* (1983), relied on foundations other than the Establishment Clause because of the facts involved and that it did not relate to the public schools (Lee, 1992, p. 603). This case involved saying an opening prayer at legislative sessions in Nebraska. The Supreme Court concluded that prayer was acceptable under the so-called legislative exemption because it involved adults and not impressionable children. In its almost 40-year history, the Supreme Court has yet to interpret the *Lemon* Test

consistently (Mawdsley & Russo, 1991). These inconsistencies led to the development of the Endorsement Test in 1985 and the Psychological Coercion Test in 1992.

Endorsement Test

The Endorsement Test originated in Justice O'Connor's concurrence in *Lynch v. Donnelly* in 1984. *Lynch* involved a town-sponsored Christmas display in Rhode Island where the plaintiffs viewed the holiday display as the government supporting religion. The Supreme Court decided that the display was not indicative of state support for a particular religion.

Justice O'Connor's concurrence questioned the purpose of a government action in terms of whether it attempted to endorse or approve of a religion or religious activity: "endorsement sends a message to nonadherents that they are outsiders, not full members of the political community. Disapproval sends the opposite message" (*Lynch*, 1984, p. 688). More than 2 decades would pass before the Court applied this test in *Santa Fe Independent School District v. Doe*, striking down prayer at a high school football game in Texas in 2000.

Psychological Coercion Test

Since, the "public schools have often been viewed as the last bastion of church/state separation, given the captive audience involved" (McCarthy, 2001, p. 8), the psychological coercion test emerged in *Lee v. Weisman* (1992). The point behind the psychological coercion test was that students attending a school-sponsored event that involved religious prayer were forced to be subject to any religious language or prayers that may be offered during the ceremony. The captive audience refers to the students and families who are present during the ceremonies. In order for them to witness this societal

rite of passage the audiences must endure the ceremony agenda developed by the school officials. In *Lee*, Justice Kennedy stated that:

Our decisions in *Engel v. Vitale* and *School District of Abington*, recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there. What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy. (*Lee*, 1992, p. 592)

The next section of chapter 2 examines the key school prayer cases in chronological order. *Engel*, *Abington* and *Lee* are a few of the key cases that will be discussed to show their importance in the evolution of school prayer and legal decisions. Before beginning the next section it is important to note that despite all of the litigation surrounding school prayer, the Supreme Court has failed to provide a definition of school prayer and religion. For simplicity, Durden (2001) wrote that “in its most basic meaning, [it] refers to school-sponsored prayer” (p. 113). In the many cases involving prayer and/or religion, it is important to acknowledge that the Court has never attempted to define either of these terms.

Engel v. Vitale

In *Engel v Vitale* (1962), the parents of 10 students filed suit on the basis that their board of education had an official prayer at the beginning of each school day. In fact, the policy of offering a daily classroom prayer was a state-wide initiative adopted by

the New York State Board of Regents. The prayer was led by the children's teacher who was an employee of the board. The prayer was as follows: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country" (*Engel*, 1962, p. 422).

Even though children could be exempted from the prayer if their parents objected, the plaintiffs argued that the students were socially coerced into being subjected to the religious proselytizing of the board. The parents initially lost the case in the New York State court system but appealed to the Supreme Court which ruled in their favor. The Court reversed the earlier judgments to the contrary, maintaining that the prayer violated the First Amendment because the state lacked proof that it had provided a separation of government activities and religious influences. In its opinion, the Court declared that the policy ignored the separation of church and state while working to proselytize the religious values of the prayer to public school students.

Engel thus forbade school-sponsored prayer and was the beginning of a hotly contested battle between religiously devout citizens and those who believed that prayer and other manifestations of religion had no place in the public schools whatsoever. The battle between these groups and those who feared their religious freedom rights would be trampled upon, is a debate that had an extensive history in early America as mentioned in prior discussion.

School District of Abington Township v. Schempp/Murray v. Curlett

Engel was quickly followed in 1963 by *School District of Abington Township v. Schempp* and its companion case *Murray v. Curlett*. *Abington/Murray* involved a daily required Bible reading statute from Pennsylvania. According to the Pennsylvania statute,

“at least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian” (*Abington*, 1963, p. 205). Further, the “exercises are broadcast into each room in the school through an intercommunications system and are conducted under the supervision of a teacher” (*Abington*, 1963, p. 207). In schools that lacked the appropriate audio equipment, the “*Bible* reading and the recitation of the Lord’s Prayer were conducted by the home-room teacher, who chose the text of the verses and read them herself or had students read them in rotation or by volunteers” (*Abington*, 1963, pp. 207-208).

In *Murray*, the suit was brought to the court by professed atheists who disagreed with a Baltimore statute providing for the “reading, without comment, of a chapter in the *Holy Bible* and/or the use of the Lord's Prayer” in opening exercises in city schools. As in *Abington*, *Murray* also challenged the required reading of the *Bible*.

In *Abington*, the parent who filed the suit challenged that “their rights under the Fourteenth Amendment to the Constitution of the United States are, have been, and will continue to be violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment” (*Abington*, 1963, p. 205). In much of the same discussion and debate in *Engel*, the Court found that the required policy in *Abington/Murray* was unconstitutional.

As part of its rationale in *Abington*, the Supreme Court asked two important questions. The first question asked what was the primary effect of the policy, while the second looked to see whether there was an advancement or inhibition of religion

(*Abington*, 1963). By asking these two questions, the Court set into motion what would eventually become the first two prongs of the *Lemon* Test.

Litigation Involving School Prayer

It has become readily apparent that as long as there are schools and prayer, there will be litigation. Following *Engel*, school boards became confused with the lack of details in the decision. This confusion would be sorted out in lower federal courts.

The first case was *Wood v. Mount Lebanon Township School District* (1972) which dealt with graduation prayer, an element that was not an issue in *Engel*. A federal trial court in Pennsylvania rejected the plaintiffs' request for an injunction to disallow an invocation and benediction as a part of a formal graduation ceremony. The court found that since participation was voluntary, and attendance of the ceremony did not impact students' ability to receive their diplomas, it was their choice whether to be present. The court also reasoned that because a member of the clergy, who was not an employee of the state, composed and delivered the prayer, the government was not entangled with religious proselytizing (*Wood*, 1972).

The second case, which was also from Pennsylvania, *Wiest v. Mt. Lebanon School District* (1974) was similar to *Wood*. The plaintiffs sought to enjoin a school board policy to allow an invocation and benediction at the graduation. (*Wiest*, 1974, p. 168). The Supreme Court of Pennsylvania ruled that the policy was constitutional because participation was purely voluntary and the policy made no attempt at advancing religion in the eyes of the court.

Grossberg v. Deusebio (1974) occurred in Virginia where parents and students requested that a prayer not be offered at graduation ceremonies. The plaintiffs originally

appealed to the school board which rejected their request. A federal trial court in Virginia stated that “the primary purpose of the graduation was ceremonial, geared toward the award of honors and diplomas, and all other portions were peripheral to this function” (*Grossberg*, 1974, p. 285). The court added that “the few moments given to the prayer would not create any significant risk of being an aid to religion” (*Grossberg*, 1974, p. 285).

In *Wood*, *Wiest*, and *Grossberg* the courts concurred that graduation prayers were acceptable and did not violate anyone’s constitutional rights. The court pointed out that the concerns about the infringement of rights and the use of public funds to conduct the ceremonies were minor. The courts further agreed that the government does not require attendance at graduation, a one-time event, prayers were not said by employees of the state, students voted to have a graduation and, students voted to have prayers (Durden, 2001). In these early prayer cases, entanglement was not much of an issue and there was little, if any, discussion of applying the *Lemon* Test. With the parameters set by the three cases, it appeared clear that the lower courts decided what was constitutionally acceptable.

From 1974 until 1982, the litigation seemed to outline the parameters school boards needed to develop policy in regard to the inclusion of graduation prayer. With the gusto and consistency with which the courts had upheld the decisions in the school boards’ favor, it would be hard to contend that facts could exist that would cause the courts to question their earlier rulings.

The next dispute, *Doe v. Aldine Independent School District* (1982) was litigated in Texas. The policy at issue involved the recitation and/or singing of a school prayer at

all extracurricular activities that met on the school board's property. Student participation was optional, but all of the events where the prayer was officially offered took place on school property. In directing the school officials to discontinue the prayers, a federal trial court maintained that "the practice of initiating, leading, or encouraging the recitation or singing of the 'Aldine School Prayer' and the posting of the words to the prayer is in violation of the First Amendment" (p. 888). *Doe* is noteworthy because it relied primarily on the *Lemon* Test to establish that the board impermissibly had attempted to advance religious objectives.

Graham v. Central Community School District of Decatur County (1985) was litigated in Iowa. The plaintiff sought to enjoin the practice of having a clergyman offering an invocation and benediction during a graduation ceremony. After discussion, the board chose to cease the school-sponsored baccalaureate ceremony and allow it to be offered off-site, voluntary, and entirely planned and offered by the Community's Ministerial Alliance (*Graham*, 1985, p. 532). In striking down the practice, a federal trial court stated that "prayer is inherently religious" and would refer back to the decision made in *Engel* as a foundational precedent in its decision supporting the plaintiff (*Graham*, 1985, p. 535).

In the pre-*Lee* cases, the views of the courts began to change. The courts had gone from supporting school boards that included school prayer at graduation ceremonies and other activities to, especially in *Graham*, a change in direction toward an accommodation of individual rights in prohibiting prayer. From *Graham* forward, the courts handed down a series of decisions with mixed messages.

Durden (2001) sums up the years prior to *Lee* in writing that:

From 1986 through 1990, nine courts reviewed graduation prayers and the only two decisions upholding graduation prayer were reversed. In the final year and a half before *Lee*, another seven graduation prayer cases were decided. In three out of those seven, the courts upheld the graduation prayer. (p. 130)

This inconsistency in the lower courts would finally reach a boiling point in 1992 in *Lee v. Weisman*.

Lee v. Weisman

Commencement ceremonies became one of the few remaining places where prayer was still present and allowed by some of the lower courts, yet, the Supreme Court had yet to hand down a decision on graduation prayer.

In 1989, during a middle school graduation ceremony, the practice of prayer became the center of a case that would eventually reach the Supreme Court in *Lee v. Weisman* (1992). The case was initially heard in lower federal courts that ruled in favor of the father and student who challenged prayer at a public school graduation.

In *Lee*, it was the tradition of principals in Providence, Rhode Island, to invite members from the religious community to deliver commencement prayers. Not only did the administration choose the religious speakers, it also provided a formal pamphlet listing the guidelines that the speakers had to follow. A student and her father who were present at the middle school graduation ceremony, unsuccessfully tried to block the prayer by applying for a restraining order. Less than one month after the commencement ceremony, the plaintiff filed an amended complaint asking for a permanent injunction

against the school board. The case made its way through the lower courts finally landing on the Supreme Court's docket in 1991.

The facts in *Lee* reveal that the middle school principal and the board argued that graduation prayers are no different from governmental religious offerings, as in *Marsh*, and similar government acknowledgments of religion in everyday public life. The defendants continued to justify their actions by indicating that religious invocations in Thanksgiving Day addresses are rarely noticed, usually ignored, and directed at no one in particular, yet are regularly allowed in public speeches. The defendants maintained that the prayers given during commencement were to follow an outlined protocol, which was distributed by the school officials and were to be nondenominational (*Lee*, 1992). The defendants indicated that this was adequate in ensuring that the First Amendment rights of parents and students were not violated.

The Supreme Court, in a decision authored by Justice Kennedy, made two major points in *Lee*. First, the Court explained the prayer itself, both the invocation and benediction (Appendix E), had the power of the government behind it since the principal selected the individual who would offer the prayer. Second, the Court thought the audience was coerced into listening to the prayer as it was read during the ceremony, eliminating the defendant's argument that attendance at the graduation ceremony was not truly mandatory. These two concerns made it clear to the Court that prayer was a violation of the Establishment Clause. The Court concluded that in this situation, where prayers were placed on the program agenda by school officials, their doing so clearly violated the Establishment Clause since they advanced religion, although not

intentionally. Interestingly, even though the lower courts had relied on *Lemon*, the Justices avoided this test in finding that the prayer was psychologically coercive.

Justice Scalia, along with Justices Rehnquist, White, and Thomas, did not agree with the ruling of the Supreme Court. In his dissent Justice Scalia maintained that:

the Court's notion that a student who simply sits in "respectful silence" during the invocation and benediction (when all others are standing) has somehow joined-or would somehow be perceived as having joined-in the prayers is nothing short of ludicrous. We indeed live in a vulgar age. But surely "our social conventions," have not coarsened to the point that anyone who does not stand on his chair and shout obscenities can reasonably be deemed to have assented to everything said in his presence. (*Lee*, 1992, p. 637)

In short, Justice Scalia questioned the psychological coercion that the student was exposed to and debated if it was real or merely perceived.

As reflected in *Lee*, religion in public education is not viewed similarly by school officials and their communities; an earlier example can be seen in *Graham* where 700 petitions were offered in support of offering an invocation and benediction prayer and only the plaintiff was against it (*Graham*, 1985, p. 534). "The *Lee* decision, although helpful in further shaping the law regarding prayer in public schools, left unanswered the important question as to whether the ban on school prayer encompasses student-initiated graduation prayers or simply applies to those prayers directed and controlled by school officials" (Baik, 2001, p. 246). While school officials and communities may not view religious issues equally, the Supreme Court made it clear that it would no longer permit

the state to select religious officials to deliver invocations or benedictions at public school-sponsored graduation ceremonies.

Post-Lee Litigation

Lee v. Weisman made it clear that the Supreme Court's stance was that it would not continue to support school districts that included prayer in their graduation ceremonies. Since *Lee*, there have been federal cases both rejecting and upholding prayer in public schools (*ACLU v. Black Horse Pike Regional Board of Education*, 1996; *Doe v. Madison*, 1998; *Gearon v. Loudoun County School Board*, 1993; *Jones v. Clear Creek Independent School District*, 1992). These cases are similar in facts but have fallen on both sides of the line drawn by the Establishment Clause (Frels, 2001). Each of these cases is further discussed in the next section.

On the same day that the Supreme Court handed down its decision in *Lee*, the Justices vacated and remanded a case from Texas, *Jones v. Clear Creek Independent School District* (1992), to the Fifth Circuit. The major difference in *Jones* was that the school board allowed the student body, rather than a district official, to select individuals to deliver the invocation. The court agreed with the board who argued that it circumvented state control, and the students were the ones to initiate, develop, and present the prayer, although school officials did have a right to review the proposed speech. The lack of guidance in allowing prayers by student-selected representatives resulted in split decisions by different circuit courts.

The issue of prayers at high school football games re-emerged in Texas where parents and students challenged two board policies that permitted student volunteers to pray at graduations and football games. In *Santa Fe Independent School District v. Doe*

(2000), a federal trial court upheld both policies but only as long as the prayers were non-sectarian and non-proselytizing. The Fifth Circuit affirmed that prayer at graduation had to be non-sectarian and non-proselytizing but reversed in striking down the policy permitting prayers at football games. Even though the board appealed on both forms of prayer, at graduation and prior to football games, the Supreme Court opted to address only the latter, thereby leaving the split between the circuits over student-led graduation prayer in place. *Santa Fe* is discussed in greater detail later in the chapter.

The Third and Ninth Circuit Courts, *ACLU of New Jersey v. Black Horse Pike Regular Board of Education*, 1996 and *Doe v. Madison School District No. 321*, 1999, respectively, disallowed this practice, citing that the ceremony was still under the auspices of the school board and its representatives.

Gearon v. Loudoun County School Board (1993), heard by a federal trial court in Virginia, ran contrary to *Jones*. In *Gearon*, schools were found to be in violation of the Establishment Clause if any type of prayer is offered during a commencement ceremony. The court disregarded who presented the prayer, reviewed it, and authorized it and pointed to the fact that listeners were a captive audience during the time they are at the ceremony (*Gearon*, 1993).

ACLU v. Black Horse Pike Regional Board of Education (1996) arose out of the confusion over *Lee*. Since *Lee v. Weisman* and the re-outlining of regulations by *Jones*, a school board in New Jersey developed and adopted a policy that was aligned with *Jones*. The Third Circuit ruled that a school board could not institute a policy that allowed students to lead the benediction at graduation. The Third Circuit maintained that graduation was a school-sponsored and arranged event and that the audience was captive

and not allowed to express views or opinions related to its organization. Even though the majority of students could approve a prayer, the court concluded that since the minority could still be offended by its presence or content, prayer was impermissible.

Doe v. Madison, was initially heard by the federal trial court in Idaho. Students challenged a policy that:

the school administration may invite graduating students to participate in high school graduation exercises according to academic class standing. A minimum of four (4) students may be asked to address the graduates at the graduation exercises....Students selected to participate may choose to deliver an address, poem, reading, song, musical presentation, prayer or any other pronouncement of their choosing. (*Doe*, 1999, p. 792)

The board argued that since it did not select a clergy, it did not violate either the Psychological Coercion Test or the Establishment Clause. The Ninth Circuit Court agreed initially but later vacated this judgment as moot since the student who filed the suit graduated (*Doe*, 1999).

Prayer at Graduation in Higher Education

During this same time frame, the lower courts were also debating a similar issue. Two cases, one in the Sixth Circuit, *Chaudhuri v. State of Tennessee* (1997), and one in the Seventh Circuit, *Tanford v. Brand* (1997), brought graduation prayer to the courts' attention. The issue in these cases was that graduation prayer was being recited at publicly supported universities. The courts indicated that the major factor was the coercion factor, similar to the facts that led to the development of the Coercion Test. The court ignored the majority of the common facts in the case and focused almost

exclusively on the coercion element. The two courts agreed that the students at the universities were more mature and responsible for their own decisions and that attendance of the graduation ceremony was optional, as it was at the high school level. Surprisingly, even with the decision in *Lee* and subsequent cases, the courts decided that the holdings of *Lee* were not relevant to public universities.

In *Chaudhuri* and *Tanford*, the courts introduced the element of maturity into the equation in determining whether governmental policies and procedures violated the Establishment Clause. Although not directly related to high school graduation cases, where the majority of the students are minors in a compulsory school setting, these decisions set precedent for prayer cases in post-secondary institutions and may be informative in later cases.

Santa Fe Independent School District v. Doe

In 2000, the Supreme Court once again debated school prayer. This time, the case dealt with student-led prayer given prior to a high school football game and graduation prayer. *Santa Fe Independent School District v. Doe* (2000) was unique because it was outside the realm of *Engel* that dealt with prayer during the academic day and beyond the parameters set forth by *Lee* in relation to prayer at graduation.

The board of the Santa Fe Independent School District understood that prayer was unconstitutional during the day. Yet, the board still had policies allowing a non-sectarian and non-proselytizing invocation to be allowed at graduation ceremonies and extracurricular events, in this case home football games. Despite *Lee*, the board believed it was permissible if a prayer was led by students who were elected by their peers. Board policy allowed the student body to elect a representative to read a prayer at each home

football game. This prayer was recited over the district's speakers located at the field to all that were in attendance.

A federal trial court in Texas ordered the board to modify the policy. On appeal, the Fifth Circuit found that the policy violated the Establishment Clause despite the modification ordered by the lower court. The case was then appealed to the Supreme Court.

In *Santa Fe*, the Supreme Court looked specifically at prayer at extracurricular events and did not address graduation prayer in its decision even though it was brought to the court's attention. The Court, without explanation, refused to hear the portion of the board policy that dealt with graduation and thus added to the confusion.

In a landmark decision, the Supreme Court struck down the school board policy, affirming that the audience was captive and that school equipment was used to deliver the prayer to the entire audience. Some of the students present at the game were required to be in attendance because they were involved with an extracurricular activity sponsored by the school. In determining if the school board policy was unconstitutional, the Court examined the school board's main reasons why they understood the policy to be permissible.

At the heart of its analysis, the Supreme Court opinion by Justice Stevens outlined three major points in justifying the Court's decision. First, the Court rejected the board's contention that the policy enhanced the free speech rights of students by allowing them to elect a student representative. Second, the Court did not agree with the defendants that the policy was religiously neutral on its face. Third, the Court ruled that the board's

defense that the legal challenge was premature based on the fact that prayer had not been offered at a football game under the board policy.

The Supreme Court pointed out that the prayer was delivered on school grounds using equipment paid for by the district using public funds. The Court disregarded the fact that the students themselves elected the volunteer speaker. The Court was of the opinion that the method of selection did not protect the views of those in the minority or provide the opportunity for them to have any input.

Justice Rehnquist's dissent, joined by Justices Scalia and Thomas, was of the opinion that:

the Court distorts existing precedent to conclude that the school district's student-message program is invalid on its face under the Establishment Clause. But even more disturbing than its holding is the tone of the Court's opinion; it bristles with hostility to all things religious in public life. (*Santa Fe*, 2000, p. 318)

Further, Rehnquist viewed the issue in *Santa Fe* as "student, not government speech" that would have possibly "passed constitutional muster" if the student had been selected on "wholly secular criteria, such as public speaking skills or social popularity" (Russo, 2004, p. 122).

With the decision in *Santa Fe*, student-led prayer was now deemed unconstitutional at athletic and other extracurricular events when conducted under school supervision and on school property.

Post-Santa Fe Litigation

Despite the numerous cases heard throughout the 1990s, the courts have recently seen a surge in suits involving religion and school prayer (*Chandler v. Siegelman*, 2001;

Cole v. Oroville Union High School District, 2000; *Corder v. Lewis Palmer School District No. 38*, 2009; *Deveney v. Board of Education of the County of Kanawha*, 2002; *Lassonde v. Pleasanton Unified School District*, 2003; *Musgrove v. School Board of Brevard County*, 2005). These cases, which involved prayer at school functions or graduations, clarified the boundary lines between the accepted and the unconstitutional, further refining the standards in *Lee* but not completely eliminating the confusion.

The cases discussed in the remainder of this subsection are ordered by circuit courts rather than by date with the sole trial court opinion at the end of this subsection. In a related case that did not reach the courts on the merits of prayer, a federal trial court in Florida, in *Musgrove v. School Board of Brevard County* (2005), granted a preliminary injunction preventing school officials from conducting a graduation ceremony in a religious institution that displayed a large cross. The court granted the relief so those who were to be present would be free “to attend a graduation ceremony that is not tainted with constitutional overtones” (p. 1304).

Current Decisions Allowing Graduation Prayer

In *Chandler v. Siegelman* (2001), the Eleventh Circuit noted that school officials in Alabama could not limit or prohibit the speech of a student if it is free from governmental controls and is student-initiated. According to the court, the school board lacked the authority to control the place, content, or time limits of the speech unless there are similar constraints on non-religious speech. The court explained that if the speech is genuine and comes directly from the student, it can be permitted at graduation. In doing so, the court permitted graduation prayer in this circumstance.

Current Decisions Disallowing Graduation Prayer

Two related cases involving prayer arose in Texas. In *Ward v. Santa Fe Independent School District* (2004), the Fifth Circuit affirmed that a high school student and her parents lacked standing to challenge a board policy prohibiting religious references in public address system messages broadcast prior to football games because they could not demonstrate any adverse effect from the judgment.

In a second case from Texas, a federal trial court, in the part of the case most relevant to this study, held that a recent high school graduate who was an adult had standing to challenge a school board's policy of allowing the graduating classes at its high schools to vote on whether to permit a student to recite a prayer at commencement ceremonies based on his allegation that he was forced to vote on whether to have an invocation (*Does 1-7 v. Round Rock Independent School District*, 2007).

The Ninth Circuit heard two cases from California dealing with graduation prayer, *Cole v. Oroville Union High School District* (2000) and *Lassonde v. Pleasanton Unified School District* (2003). In *Cole*, the court affirmed an earlier order forbidding student prayer, regardless of whether it was sectarian or non-sectarian, in valedictorian addresses. The court rejected the claims of the student plaintiff who alleged that officials violated his right to free speech in light of the potential Establishment Clause difficulties that the prayer might have presented. Similarly, in *Lassonde*, relying on *Cole*, the court affirmed that school officials did not violate the free speech, religious, or due process rights of a student who wished to include a religious element to his commencement address since doing so might have violated the Establishment Clause.

In *Corder v. Lewis Palmer School District No. 38* (2009), the Tenth Circuit ruled in favor of school officials in Colorado who reprimanded a student found violating a school policy by including proselytizing remarks in her graduation address. After the student submitted one version of her address, but presented another, school officials required her to send e-mail apologies to all present before she could receive her diploma. The court explained that since the student had spoken at the graduation, educators did not violate her rights to free expression of religion because her talk could be treated as school sponsored speech that could not address religion in the manner in which she did.

Summary of Lower Court Decisions on Graduation Prayer

Litigation involving schools and prayer has been frequent and complicated to say the least. With the differences in the rulings of the federal circuit courts, it is easy to see how there could be confusion across the United States. To date, graduation prayer is permitted by the Eleventh Circuit in *Chandler* but is prohibited by the Third (*ACLU v. Blackhorse Pike Regional Board of Directors*; 1996), Fifth (*Santa Fe v. Doe*; 2000), Ninth (*Cole v. Oroville Union High School District* (2000)), and arguably the Tenth (*Corder v. Lewis Palmer School District No. 38* (2009)), respectively. Other federal circuit courts have yet to weigh in on the issue. Since, the Sixth Circuit, which includes Ohio, has not handed down a decision on graduation prayer the status of student led prayer here is uncertain.

The courts have agreed that school boards should not arrange to have religious speakers or school officials offer prayers. To say that litigation has resolved the issue of graduation prayer and not muddied the water would be folly. Yet, with each new case, the courts provide more guidance and it is the researcher's hope that future research will be

more definitive in its guidelines for school boards. Until that time, the Supreme Court will continue to be the legal mechanism necessary to unite the decisions of the circuit courts and bring consistency across the nation in regard to prayer at graduation ceremonies.

Prior Research Studies and Public Opinion Polls

It is important to note that in the examination of prior research, the researcher chose to focus on only empirical studies. To date, only three research studies were located with similarities to this dissertation's objectives. The first study was conducted by Mariellen F. Scott from Lehigh University and examined Pennsylvania schools in 1987. The second study was conducted by Mark E. Porter from the University of Arkansas in 1993. The final study was conducted by Albert J. Cunningham from Temple University in 1994 who researched school boards' practices in Pennsylvania. One professional study, by Schimmel and Militello, was published in 2007.

In 1987, Mariellen F. Scott examined the legality of prayer in the public schools, surveying 586 teachers in Pennsylvania on their knowledge, attitude, and practice in relation to prayer. Scott found that Pennsylvania teachers are for the most part neutral in relation to school prayer and that they indicated a slight tendency toward disfavoring the constitutionality of school prayer. More important to this study, Scott reported that an overwhelming majority (96%) of Pennsylvania classroom teachers did not practice school prayer in their classrooms, which was in contrast to the 64% of the high schools in the study indicating that there was still an invocation and/or benediction offered at the high school graduation ceremony (Scott, 1987).

Mark E. Porter completed a doctoral dissertation in 1993 that evaluated "the status of certain religious practices in the public schools of Missouri and then, to determine if any significant differences exist in the State of Missouri and the frequency of these practices based on the variables of geographic location and school district size" (Porter, 1993). According to Porter (1993), superintendents reported that 91% had a public prayer at commencement in 1991-92 and 23% had a public prayer at commencement in 1993-94. Further, 82% of respondents stated that *Lee v. Weisman* altered their prayer policy and 23% agreed with the *Lee v. Weisman* decision (Porter, 1993).

The final doctoral dissertation was conducted by Albert J. Cunningham in 1994, who also collected data on Pennsylvania school districts. Based on the results of an initial survey, Cunningham reported that his findings presented evidence that administrators' knowledge of the law in early 1992 was low. He found that the majority of administrators surveyed personally favored graduation prayer. However, the results of the surveys showed a significant change in practice from 1992 to 1993 (from 71.3% reporting prayer to 12.9% reporting prayer). Cunningham believed that the decision in *Lee v. Weisman* impacted the practice of districts in the survey.

Outside of doctoral theses, David Schimmel and Matthew Militello surveyed more than 1,300 K-12 teachers in 17 states. Their findings suggested that:

most educators are (1) uninformed or misinformed about student and teacher rights; (2) have taken no courses in school law; (3) get much of their school law information from other teachers; (4) would change their behavior if they knew more about school law; and (5) want to learn more about these issues.

(Schimmel & Militello, 2007, p. 257)

Another measure concerning attitudes toward school prayer is public opinion polls. A Phi Delta Kappa study conducted in 1993, immediately after the decision in *Lee*, showed that approximately 71% of superintendents in a national sample group reported that there was some type of benediction or devotional prayer offered in their districts (Barber, 1993, p. 125). Most of these involved student-led prayers or other messages of a religious nature (McCarthy, 2001).

In a more recent study, 83% of Americans still favor an official prayer at high school graduations (Doerr, 1999, p. 35). Various national polls, in conjunction with Phi Delta Kappa, through Gallup, Inc. have surveyed people on their opinions on church-state relations in regard to the public schools. Moore reported that "The poll, conducted Aug. 8-11, 2005 finds 76% of Americans favor a constitutional amendment to allow voluntary prayer in public schools, while just 23% oppose such an amendment. This is not new. In 1983, a similar poll indicated 81% in favor, and polls in the past decade show about three-quarters of Americans consistently supportive" (2005). These polls have gathered public opinion but have not surveyed the knowledge and beliefs of school superintendents on the issue of church-state relations.

The three doctoral studies, combined with the findings of Schimmel and Militello and the public opinion polls, provide an insight into church-state relations in a number of states and at differing times in the past. The most recent of the three doctoral studies was conducted in 1994. In the interim, there has been a gap in research collected and analyzed in relation to prayer at graduation ceremonies, especially in Ohio. The authors of these studies presented useful data and statistics to show that there has been a change in states

other than Ohio. With no study conducted in Ohio, there is a void in the research to see if Ohio has also been impacted by these same issues.

Summary

Education has become more and more under the watchful eye of the federal government and it has been left to the courts to decide the fate of public education. Every new appointment to the Supreme Court may result in a shift in current paradigms and force schools to deal with new parameters for the way they address the issue of prayer. Mead, Green, and Oluwole (2007) describe the impact that a single Supreme Court Justice can make in the judgments that are handed down. These authors ask an interesting question: "Is it possible that the Court could reverse the decisions of the last decade and a half and find that various forms of school prayer are constitutional?" (p. 381). How would the possibility of these potential reversals impact Ohio school districts? This same line of thought is reflected by McCarthy (2001), who wrote that "because of ambiguities in the Establishment Clause rulings, school personnel are continually seeking guidance. Schools feel vulnerable to lawsuits whatever they do in the church/state arena" (p. 8). This is evident in cases where prayer has been viewed as constitutional, such as *Jones*, as well as others, where prayer was viewed to the contrary such as *Lee*, *Doe v. Aldine Independent School District*, and *ACLU*. School board officials need to monitor these personnel changes on the Court and how they influence new cases.

As this chapter has reviewed the key cases, it is important to recognize that from these judicial decisions, school boards and officials must make and address policies that impact millions of students across the United States. As superintendents and board

members deal with a multitude of other issues, it is easy to see where they can be confused by these rulings.

Prayer has opened legislative sessions of Congress, has been included in numerous presidential inaugural speeches where each president is sworn in on a Bible, and has remained an integral part of a national celebration of Christmas. The national motto printed on our money is "in God we trust," and the words "under God" are posted in the United States Pledge of Allegiance. In essence, religion is all around, and it is unavoidable in most citizens' daily lives. Yet, despite all of these public exhibitions of religious support, a subject such as prayer at high school graduation ceremonies has taken more than 4 decades to define, and it likely will continue to be debated in the future as even more details are determined through litigation.

How much of this knowledge has been presented to public school administrators and local school boards? If school boards act blindly, either willingly or due to lack of knowledge of school law, to adopt the policy suggested by these laws, their federal funding may be reduced significantly. Even if they follow the laws, school boards open themselves to costly litigation for even the most minor of offenses when different groups of parents cannot agree. An argument can be made that the courts have done a sufficient job in providing guidelines to school officials, but those guidelines continue to change as new cases are decided. Even so, some of the decisions are difficult to understand and apply to individual districts. On a continuum, school-religion litigation has been trending from general in the 1960s, with the decision in *Engel*, to specific in the 2000s, such as the decision in *Santa Fe*, with the current understanding being that prayer in public schools is constitutionally impermissible.

In light of how controversial school prayer was, on August 10, 1998, Richard W. Riley, then U.S. Secretary of Education, sent a letter to all public school superintendents to address some of the concerns that he and President Clinton shared. In the letter, Secretary Riley strived “to provide every school district in America with a statement of principles addressing the extent to which religious expression and activity are permitted in our public schools” (United States Department of Education, 1998, p.1).

The principles outlined in the letter specifically addressed the rights of students to “pray in a non-disruptive manner during the school day when they are not engaged in school activities and instructions” (United States Department of Education, 1998, p. 1). The full letter, located in Appendix F, also reinforced major points discussed in the Establishment Clause and outlined by the Justices in previous decisions while reminding superintendents that “schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity” (United States Department of Education, 1998, p. 1). By the end of the letter, Secretary Riley discussed the confusion in some districts by stating that:

Although most schools have been implementing these principles already, some problems have arisen where people are unaware of, or do not understand, these obligations. It is my sincere hope that these principles will help to end much of the confusion regarding religious expression in the public schools and that they can provide a base for school officials, teachers, parents, and students to work together to find common ground-helping us get on with the important work of education. (pp. 1-2)

The letter was a leap forward in direct communication between and among the federal government, the state government, and the local school boards. The letter was an authentic attempt to educate all parties, and in the spirit of the letter, to find common ground.

Eight years later, in 2003, the Secretary of Education, Roderick Paige, released another letter explaining the rights of students involving their personal prayer and the protection of personal religious activities. The letter, located in Appendix G, went further into detail to look at some of the issues that had been brought to the Supreme Court's attention. At the same time, the letter advised school officials that they:

May not compel students to participate in prayer or other religious activities nor may teachers, school administrators and other school employees, when acting in their official capacities as representatives of the State, encourage or discourage prayer, or participate in such activities with students. (United States Department of Education, 2003b, p. 1)

A considerable amount of confusion and potential litigation remains in public schools as boards and superintendents try to predict how to avoid violating the Establishment Clause. McPherson shared that "perhaps it is because schools play such a major role in shaping the character of young people that the role of religion in the school has proven such fertile soil for constitutional litigation" (1997, p. 393). Nonetheless, school boards, superintendents, and other educators must understand that public schools will continue to be the battleground and must prepare themselves accordingly by staying current with recent court decisions and understanding school law. In this regard, Gordus (1994) noted that:

Public school boards are in a difficult position because they derive their authority from the State government, yet the local community elects them. Because of the duality, a school board must comply with restrictions applicable to the State, including the Establishment Clause, and be responsive to the local community that elects members. Often the demands of the local community will conflict with those of the Establishment Clause. (p. 659)

When it comes to issues of education and religion, since knowledge truly is power, it is the key to ensuring that the rights of all are honored.

Conclusion

Chapter 2 has discussed the lengthy road of litigation that has paved the way for this study. Lower courts have rendered split decisions on the constitutionality of public school graduation ceremonies leaving boards and superintendents confused about the wording of their policies. Without proper guidance, school boards and superintendents cannot prepare appropriately to avoid litigation. The Supreme Court has made it clear that any school-sponsored prayer violates the Establishment Clause.

The research conducted in this study was designed to collect and analyze information based on this need for preparedness and to attempt to clear up the confusion that currently exists in Ohio schools. This study collected data that should help to paint a current picture of school prayer in Ohio public schools. The intent of the research was to examine existing practices and knowledge levels of superintendents in relation to graduation prayer practices and religious case law. This research may further serve to help analyze the necessity and value of staff development sessions on school law, particularly dealing with school prayer and religion. The information must be in the

hands of those who need it the most: school officials and local boards of education.

Without useful information on the current status of graduation prayer in Ohio, there is no way to understand what the next step is to help resolve existing issues or those in the future.

Chapter 3 explains the dissertation's research design. The chapter outlines the hypotheses, the participants, and the instrument used in the data collection. Chapter 3 also covers the data collection and statistical analysis while providing a concise summary of the study's statistical methodology.

CHAPTER III

RESEARCH DESIGN

Chapter 3 reviews the methodology used in this dissertation, focusing on the research design which includes the research objectives and hypotheses, procedures in sampling, data collection, and statistical analysis as well as a description of the survey instrument.

Methodology

The investigator employed a descriptive-exploratory research design to investigate the knowledge and beliefs of public school district superintendents in Ohio about prayer at commencement ceremonies. This study was a descriptive analysis illustrating the status of superintendents' attitudes toward graduation prayer in Ohio as well as their knowledge and beliefs. Each survey included a cover letter (Appendix H) outlining the purpose of the study, guaranteeing the participants anonymity and confidentiality, and informing the recipients of their rights if they choose to be participate. The researcher-developed survey instrument (Appendix A) was electronically distributed to gather data for analysis from all school districts in Ohio. The researcher also sought and received an approval letter from the University of Dayton Institutional

Review Board for the protection of human subjects in research. The letter can be found in Appendix I. Four weeks after the surveys were electronically mailed, the survey link was closed and the data were entered and analyzed using the *Statistical Package for the Social Sciences* version 13 (SPSS) and Microsoft Excel software programs.

As revealed by the lack of empirical studies previously noted in Chapter 2, there was a need for a study to examine the current status of graduation prayer in Ohio after years of litigation. In order to stimulate school boards and superintendents to reflect on the effects of this litigation on the rights of their schools, communities, and other stakeholders, a formal exploratory study needed to be developed and disseminated.

Research Objectives

This study addressed three objectives:

- Objective 1: To document the current level of superintendents' knowledge of modern litigation involving religion and the public schools.
- Objective 2: To explore and describe patterns by applying quantitative methods to develop a profile of graduation prayer in Ohio.
- Objective 3: To report the data and recognize trends that lend themselves to developing future research questions.

Null Hypotheses

1. H_{01} = No statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more).
2. H_{02} = No statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other).

Research Hypotheses

1. H_{a1} = A statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more).
2. H_{a2} = A statistical relationship exists between prayer at graduation ceremonies (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other).

Participants

The population of this study was superintendents of public secondary schools in the state of Ohio in districts that conduct formal commencement ceremonies.

Sampling Procedures

The researcher sent school district superintendents a survey link via email on January 24, 2008. The emails were sent using electronic addresses provided by the Buckeye Association for School Administrators (BASA). The researcher included a cover letter (Appendix H) and an electronic link to the survey (Appendix A) to the entire population of participants.

Survey Instrument

The instrument was researcher-developed, since no existing survey instrument could be located for this type of study. The survey was designed to obtain information on district size, district location, presence of a formal commencement ceremony, presence of a prayer, and if there is a prayer, to understand information about who recites it, as well as knowledge and beliefs of superintendents on this topic.

Due to the geographic size of the state of Ohio and the distance between school districts, an electronic survey was the logical choice for a data collection instrument. It is

cost and time-effective in obtaining the desired information for this study. The survey instrument (Appendix A) was distributed to gather data for analysis from all school districts in Ohio. Each survey included a cover letter (Appendix H) to outline the purpose of the study as well as to describe the anonymity and confidentiality involved in the study.

The survey instrument was divided into four sections: Demographic Information, Graduation Practices, Knowledge of the Law Pertaining to School Prayer, and Your Attitudes Toward School Prayer. The demographic information section was comprised of 10 questions. These questions were designed to obtain demographic data on district enrollment, location, experience of the superintendent, and knowledge levels of the superintendent. The second section contained eight questions that probe for information on graduation practices, specifically graduation prayer and who leads it if it does exist in the district. The third section, which contained nine questions, addresses the superintendents' knowledge of case law as it relates to schools, and gleans important information about landmark Court cases, specifically *Engel v. Vitale* (1962) and *Lee v. Weisman* (1992), and how they related to policies in their districts. The final section contained six questions examining the superintendents' attitudes toward school prayer. These four sections were developed to evaluate to what extent litigation and ongoing jurisprudence have impacted prayer practices at high school graduation ceremonies. Analyzing the results of the survey should help to determine superintendents' current knowledge and beliefs about school-sponsored prayer and, more specifically, prayer offerings at commencement ceremonies.

As noted, because there was not a sufficient survey instrument in existence, the researcher developed a tool to collect the necessary information. The survey was sent to Dr. Ralph D. Mawdsley, Dr. Martha M. McCarthy, and Dr. Allan G. Osborne, Jr., to be validated as an instrument to gather the necessary information. These individuals are well-known in the field and have published numerous articles on the topic of educational law and religion. All three school law experts offered their advice and suggested changes. The researcher adjusted the instrument to reflect the advice of the experts and the needs of the study. The correspondence from these experts can be found in Appendices B, C, and D, respectively.

Variable List

The nature of this study is primarily exploratory and relational. In order to address the aforementioned objectives, it is necessary to gather a snapshot of current beliefs and knowledge about graduation prayer practices in Ohio. Therefore, there are 33 variables based on individual questions in the survey.

Variable 1: Gender

Variable 2: Age

Variable 3: Religious Denomination

Variable 4: Total Enrollment

Variable 5: District Location

Variable 6: Teaching Experience

Variable 7: Administrative Experience

Variable 8: Law Courses Taken

Variable 9: Staff Development Course Taken – Law Related

Variable 10: Time of Last Course/In-service Involving School Law

Variable 11: Presence of a Baccalaureate Ceremony

Variable 12: Location of Baccalaureate

Variable 13: Time of Baccalaureate

Variable: 14: Presence of a Formal Commencement Ceremony

Variable 15: Time of Prayer at Commencement

Variable 16: Who Leads the Prayer?

Variable 17: How is Speaker Chosen?

Variable 18: Is there a Board Policy on Prayer?

Variable 19: Separation of Church and State

Variable 20: Knowledge of *Engel v. Vitale*

Variable 21: Outcome of *Engel v. Vitale*

Variable 22: Knowledge of *Lee v. Weisman*

Variable 23: Outcome of *Lee v. Weisman*

Variable 24: Prayer Acceptable at Extracurricular Activities

Variable 25: Court's Current Stance on School Prayer

Variable 26: Prayer Acceptable with the Community

Variable 27: Prayer Acceptable with Majority of Community

Variable 28: Prayer is Acceptable with Board Approval

Variable 29: Graduation Prayer Included

Variable 30: Graduation Prayer vs. Baccalaureate

Variable 31: Prayer is Necessary

Variable 32: Community Feelings about Prayer

Variable 33: Separation of Church and State in Relation to Graduation Prayer

Data Collection Procedures

Data were collected by a researcher-developed survey containing 33 questions, which was sent to school superintendents state-wide. This survey was designed to obtain basic descriptive information such as district size, district type, presence of a formal commencement ceremony, stage at which prayer is given in the ceremony, who presents the prayer to the audience, level of law courses or law in-services, and their knowledge of individual landmark cases that exclusively deal with religion and the public schools. Some of the data was collected in order to use a chi-square analysis to evaluate the research hypotheses. This information helped the researcher to construct an image of what the current status of school prayer at graduation is as well as to obtain information on the school law knowledge level of superintendents.

As noted, the survey link was distributed on January 24, 2008, via the online survey tool surveymonkey.com. The survey link was closed on February 29, 2008, and the data were entered into the *SPSS* version 13 and Microsoft Excel programs for statistical analysis.

Statistical Analysis Procedures

All data were gathered solely from the survey that was emailed to all district superintendents in Ohio who were asked to complete it via surveymonkey.com. The majority of statistical analysis processes applied are frequency distribution and other measures of central tendency in order to develop a picture that meets the objectives associated with this study.

Conclusion

Chapter 3 explained the study's research design and objectives. The chapter also discussed the null and research hypotheses. Further, it listed the statistical portions involved in the study such as the participants, sampling procedures, survey instrument, data collection procedures, and statistical analysis procedures.

The data collected were then analyzed to calculate the statistical mean from the responses provided. These data provided the major portion of the study and addressed the three research objectives of the study. Further, some data was analyzed using a chi-square to evaluate the research hypotheses. These results will be listed in chapter 4 and further discussed in chapter 5. Overall, the chapter provides for a concise summary of the statistical methodology of the study.

CHAPTER IV

REPORT OF FINDINGS

Chapter 4 brings life to the data collected in the study by focusing on reporting the demographic information that was collected as well as reporting the statistical findings resulting from the survey responses. The chapter is divided into three sections addressing the survey demographic responses, research hypotheses and a conclusion.

Respondent Demographic Responses

As noted, the survey was sent electronically to 698 school district superintendents, including those at educational service centers, in January 2008 using surveymonkey.com. Of the survey links sent, 282 individuals responded for a return rate of 40.4%. The survey rate of the study is further discussed in chapter 5.

Using the data collected from the survey to assess research question 1, frequencies and percents were calculated and are displayed in Tables 1 through 34 in relation to their correlated question on the survey. The analysis of research questions #1 and #2 are presented in Tables 34 and 35, respectively.

Two hundred and eighty-two individuals participated in the survey, 82.3% ($n = 232$) were male and 17.7% ($n = 50$) were female (see Table 1).

Table 1

Frequencies and Percents for Gender

Gender	<i>f</i>	%
Male	232	82.3
Female	50	17.6
Total	282	100.0

Table 2

Frequencies and Percents for Age

	<i>f</i>	%
Under 35	1	0.4
36-45	45	16.1
46-55	113	40.5
Over 55	120	43.0
Total	279	100.0

The majority, 43.0% ($n = 120$) of the respondents, were over 55 years of age with 83.5% being 46 or older. Table 2 presents frequencies and percents for age range.

Table 3

Frequencies and Percents for Religious Denomination

	<i>f</i>	%
Catholic	79	28.9
Protestant	175	64.1
Jewish	1	0.4
Other	18	6.6
Total	273	100.0

Table 3 summarizes frequencies and percents for religious identities, where the majority, 64.1% ($n = 175$) of the respondents, belonged to a Protestant religious denomination.

Table 4

Frequencies and Percents for Total District Enrollment

	<i>f</i>	%
1-1,000	64	23.1
1,001-2,000	92	33.1
2,001-3,000	51	18.3
3,000 or more	71	25.5
Total	278	100.0

The majority 33.1% ($n = 92$) of respondents' total district enrollment was between 1,001 and 2,000 (see Table 4). The majority 171 (61.7%) respondents reported that their districts were rural (see Table 5). The other locations identified by respondents' answers included 26.7% ($n = 74$) suburban, 6.9% ($n = 19$) urban, and 4.7% ($n = 13$) other.

Table 5

Frequencies and Percents for District Location

	<i>f</i>	%
Rural	171	61.7
Urban	19	6.9
Suburban	74	26.7
Other	13	4.7
Total	277	100.0

Table 6 displays frequencies and percents for years of experience as a full-time teacher, where the majority 64.7% ($n = 172$) of respondents had between 6-15 years. The

majority of respondents, 41.5% ($n = 115$), had between 15-25 years of experience as a full-time administrator (see Table 7).

Table 6

Frequencies and Percents for Years of Experience as a Full-time Teacher

	<i>f</i>	%
1-5	61	22.9
6-15	172	64.7
15-25	30	11.3
More than 25	3	1.1
Total	266	100.0

Table 7

Frequencies and Percents for Years of Experience as a Full-time Administrator

	<i>f</i>	%
1-5	5	1.8
6-15	90	32.5
15-25	115	41.5
More than 25	67	24.2
Total	277	100.0

The minority of respondents, 35.7% ($n = 100$), had taken no school law courses in the past 10 years (see Table 8). Although many superintendents identified taking at least one school law course during this time, 100 of those who responded had none in the past 10 years. For a majority of respondents, 92.8% ($n = 259$), "Staff Development Sessions on Updates for School Law Taken in the Last Ten Years" was more than two staff development sessions on updates for school law (see Table 9). The majority, 68.6%

($n = 192$), of responses to the question of the “Last Time a Course or In-service Involving School Law was Taken” was less than a year (see Table 10).

Table 8

Frequencies and Percents for School Law Courses Taken in the Last 10 Years

	Frequency	Percent
No courses on school law	100	35.7
1 course on school law	49	17.5
2 courses on school law	51	18.2
More than 2 courses on school law	80	28.6
Total	280	100.0

Table 9

Frequencies and Percents for “Staff Development Sessions on Updates for School Law Taken in the Last 10 Years”

	<i>f</i>	%
No staff development sessions on updates for school law	3	1.1
1 staff development sessions on updates for school law	6	2.2
2 staff development sessions on updates for school law	11	3.9
More than 2 staff development sessions on updates for school law	259	92.8
Total	279	100.0

Table 10

Frequencies and Percents for "Last Time a Course or In-service Involving School Law was Taken"

	<i>f</i>	%
Less than a year	192	68.6
1-2 years ago	61	21.7
3 years ago	8	2.9
5 or more years ago	19	6.8
Total	280	100.0

One hundred and seventy-one (66.3%) respondents answered "No" to "Does your school district conduct a baccalaureate ceremony," and 33.7% ($n = 87$) answered "Yes" (see Table 11). The majority, 63.3% ($n = 57$) of respondents reported that the baccalaureate ceremony was conducted in a local church (see Table 12). The majority, 63.6% ($n = 56$) of respondents indicated "more than one day before the graduation ceremony" for the question of when the baccalaureate ceremony takes place (see Table 13). The majority, 96.2% ($n = 252$), responded "Yes" to whether their school has a formal commencement ceremony, and 3.8% ($n = 10$) reported they did not (see Table 14).

Table 15 presents frequencies and percents for prayer during the formal commencement, where the majority 58.6% ($n = 146$) of respondents indicated "No prayer."

Table 11

Frequencies and Percents for "Does your School District Conduct a Baccalaureate Ceremony?"

	<i>f</i>	%
Yes	87	33.7
No	171	66.3
Total	258	100.0

Table 12

Frequencies and Percents for "Location of Baccalaureate Ceremony"

	<i>f</i>	%
At the school	30	33.3
In a local church	57	63.3
Other	3	3.4
Total	90	100.0

Table 13

Frequencies and Percents for "When the Baccalaureate Ceremony Takes Place"

	<i>f</i>	%
The night before the graduation ceremony	12	13.6
The day of the graduation ceremony	13	14.8
More than one day before the graduation ceremony	56	63.6
Other	7	8.0
Total	88	100.0

Table 14

Frequencies and Percents for "Does your School have a Formal Commencement Ceremony?"

	<i>f</i>	%
Yes	252	96.2
No	10	3.8
Total	262	100.0

Table 15

Frequencies and Percents for "Is there Prayer During your Formal Commencement Ceremony?"

	<i>f</i>	%
Before	53	21.3
During	42	16.9
After	8	3.2
No prayer	146	58.6
Total	249	100.0

The majority of respondents, 72.1% ($n = 80$), reported that prayers during commencement ceremonies were student-initiated (see Table 16). The majority, 54.3% ($n = 57$) of respondents reported that commencement speakers were chosen by the student body (see Table 17 for frequencies and percents).

Table 16

Frequencies and Percents for "Who Leads Prayer During Commencement Ceremony?"

	<i>f</i>	%
Student initiated	80	72.1
Administratively led	2	1.8
Led by a local religious leader	25	22.5
Other	4	3.6
Total	111	100.0

Table 17

Frequencies and Percents for "Is the Speaker Chosen?"

	<i>f</i>	%
By the schools administrator	24	22.9
By the student body	57	54.3
Other	24	22.8
Total	105	100.0

Table 18

Frequencies and Percents for "Does your Board have a Policy Governing Prayer at Graduation?"

	<i>f</i>	%
Yes	54	21.8
No	194	78.2
Total	248	100.0

One hundred and ninety-four (78.2%) respondents indicated that their boards do not have policies governing prayer at graduation compared with 21.8% ($n = 54$) who responded that they did (see Table 18). One hundred and sixteen (55.5%) respondents

answered “No” to the question of whether the Constitution of the United States specifically uses the term “separation of church and state” and 93 (44.5%) answered “Yes” (see Table 19). The majority, 59.0% ($n = 125$), of the respondents were not familiar with the Supreme Court’s decision in *Engel v. Vitale* (1962), and 41.0% ($n = 87$) were (see Table 20).

Table 19

Frequencies and Percents for the Constitution of the United States Specifically Uses the Term “Separation of Church and State”

	<i>f</i>	%
Yes	93	44.5
No	116	55.5
Total	209	100.0

Table 20

Frequencies and Percents for “I am Familiar with the U.S. Supreme Court Decision in Engel v. Vitale (1962)”

	<i>f</i>	%
Yes	87	41.0
No	125	59.0
Total	212	100.0

Table 21

Frequencies and Percents for "Which Statement Generally Best Summarizes the U.S. Supreme Court's Holding in Engel v. Vitale?"

	<i>f</i>	%
School-sponsored prayer in school is constitutional in all situations	4	2.6
School-sponsored prayer in school is constitutional in some situations	37	24.2
School-sponsored prayer in school is unconstitutional in all situations	77	50.3
School-sponsored prayer in school is unconstitutional in some situations	35	22.9
Total	153	100.0

In response to which statement generally best summarizes the Supreme Court's holding in *Engel v. Vitale*, the majority 50.3% ($n = 77$) of respondents reported that school-sponsored prayer in school is unconstitutional in all situations (see Table 21). In addition, the majority, 56.2% ($n = 117$), of respondents were not familiar with the Supreme Court's decision in *Lee* (1992) while 43.8% ($n = 91$) were knowledgeable about the case (see Table 22).

Table 22

Frequencies and Percents for "I am Familiar with the U.S. Supreme Court Decision in the Case Lee v. Weisman (1992)"

	<i>f</i>	%
Yes	91	43.8
No	117	56.2
Total	208	100.0

Table 23

Frequencies and Percents for "Which Statement Generally Best Summarizes the U.S. Supreme Court's Holding in Lee v. Weisman?"

	<i>f</i>	%
Prayer at graduation is at the discretion of the school board.	4	2.8
Prayer at graduation is constitutional if freely given by a student.	77	54.2
None are correct.	61	43.0
Total	142	100.0

Table 24

Frequencies and Percents for "Prayer is Acceptable at Extracurricular Activities"

	<i>f</i>	%
Yes	76	39.4
No	117	60.6
Total	193	100.0

The majority, 54.2% ($n = 77$) of respondents, in responding to what they thought best summarized the Supreme Court's holding in *Lee v. Weisman*, indicated that prayer at graduation is constitutional if freely offered by students (see Table 23).

One hundred and seventeen (60.6%) of the respondents believed that prayer is unacceptable at extracurricular activities and 76 (39.4%) believe prayer is acceptable (see Table 24). The majority, 95.4% ($n = 187$) of respondents, in response to what they thought best describes the Supreme Court's current stance on prayer, responded that prayer during the school day is at the discretion of students (see Table 25).

Table 25

Frequencies and Percents for "Which Statement Best Describes the Supreme Court's Current Stance on Prayer?"

	<i>f</i>	%
Prayer during the school day is at the discretion of the school board.	7	3.6
Prayer during the school day is at the discretion of the superintendent.	1	0.5
Prayer during the school day is at the discretion of the building principal.	1	0.5
Prayer during the school day is at the discretion of the student.	187	95.4
Total	196	100.0

One hundred and fifty-eight (79.0%) of respondents indicated that prayer at graduation is unacceptable even if a community has no objections while 42 (21.0%) thought that prayer was acceptable (see Table 26).

One hundred and seventy-two (84.3%) of respondents indicated that prayer at graduation is unacceptable even if the majority of the community has no objections, and 32 (15.7%) did not (see Table 27).

One hundred and sixty-eight (81.6%) of the respondents indicated that prayer at graduation is unacceptable even if approved by the board of education, and 38 (18.4%) did not (see Table 28).

Table 26

Frequencies and Percents for "Prayer at Graduation is Acceptable if the Community has no Objections"

	<i>f</i>	%
Yes	42	21.0
No	158	79.0
Total	200	100.0

Table 27

Frequencies and Percents for "Prayer at Graduation is Acceptable if the Majority of the Community has no Objections"

	<i>f</i>	%
Yes	32	15.7
No	172	84.3
Total	204	100.0

Table 28

Frequencies and Percents for "Prayer at Graduation is Acceptable if Approved by the Board of Education"

	<i>f</i>	%
Yes	38	18.4
No	168	81.6
Total	206	100.0

The majority, 41.1% ($n = 83$) of respondents, indicated that a graduation prayer should be included (see Table 29). The majority, 62.5% ($n = 125$) of respondents, answered that prayer at graduation differs from prayer at a baccalaureate ceremony, and 37.5% ($n = 75$) did not agree with that statement (see Table 30).

One hundred and seventy-six (85.0%) of respondents answered "No" to the question of whether prayer is a necessary part of a graduation ceremony and 31 (15.0%) responded "Yes" (see Table 31). The majority, 85.6% ($n = 179$) of respondents, indicated that their communities would accept prayers at graduations (see Table 32). The majority, 57.7% ($n = 120$) of respondents, did not agree that there should be separation of church and state with regard to prayer at graduation ceremonies (see Table 33).

Table 29

Frequencies and Percents for "Graduation Prayer should be Included"

	<i>f</i>	%
Never	83	41.1
Sometimes	36	17.8
In special situations	26	12.9
Always	57	28.2
Total	202	100.0

Table 30

Frequencies and Percents for "Prayer at Graduation Differs from Prayer at a Baccalaureate Ceremony"

	<i>f</i>	%
Yes	125	62.5
No	75	37.5
Total	200	100.0

Table 31

Frequencies and Percents for "Prayer is a Necessary Part of a Graduation Ceremony"

	<i>f</i>	%
Yes	31	15.0
No	176	85.0
Total	207	100.0

Table 32

Frequencies and Percents for "My Community Would Accept a Prayer at Graduation"

	<i>f</i>	%
Yes	179	85.6
No	30	14.4
Total	209	100.0

Table 33

Frequencies and Percents for "Do you Agree that there should be a Separation of Church and State in Relation to Prayer at Graduation Ceremonies?"

	<i>f</i>	%
Yes	88	42.3
No	120	57.7
Total	208	100.0

Research Hypothesis #1

In order to examine Hypothesis 1, the researcher conducted a chi-square to assess whether a relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more). The results are summarized in Table 34. The results of the chi-square were significant

$\chi^2(3) = 21.42, p < .001$, suggesting that a relationship does exist, and the null hypothesis was rejected. The results suggest that a larger proportion of participants did have a prayer ceremony compared to those that did not. A larger proportion from district size of 3,000 or more did not have a prayer ceremony compared to those that did, and a larger proportion from district size 1-1,000 did have a prayer ceremony compared to those that did not.

Table 34

Chi-square between Prayer Ceremony and District Size

Ceremony	District Size			
	1-1,000	1,001-2,000	2,001-3,000	3,000 or more
No prayer	25	42	28	49
Prayer	30	43	19	10

Note. $\chi^2(3) = 21.42, p < .001$.

Research Hypothesis #2

To examine Hypothesis 2, a chi-square was conducted to assess whether a relationship exists between prayer at the graduation ceremony (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other). The results are summarized in Table 35. The results of the chi-square were significant $\chi^2(3) = 46.62, p < .001$, revealing that a relationship does exist and the null hypothesis was rejected. Analyzing the results suggests that a larger proportion of participants did have a prayer ceremony compared to those that did not. A larger proportion from rural districts did have a prayer ceremony compared to those that did not, and a larger proportion from urban, suburban, and other districts did not have a prayer ceremony compared to those that did.

Table 35

Chi-square between Prayer Ceremony (Q15) and District Location (Q5)

	District location			
Ceremony	Rural	Urban	Suburban	Other
No Prayer	63	15	55	11
Prayer	88	3	11	0

Note. $\chi^2(3) = 46.62, p < .001$.

Conclusion

Chapter 4 outlined the data collected via the survey and reported the results produced from the statistical analysis. The variables involved in the two research questions were subjected to a chi-square test and the results listed. Further explanation of the data reported in this chapter is discussed in chapter 5 in greater depth. Chapter 5 also covers the results of the research objectives, a deeper analysis of the research questions, and recommendations for boards and superintendents. Additionally, chapter 5 discusses the limitations of the study as well as recommendations for further study and the conclusion of the study will be covered in the latter half of the subsequent chapter.

CHAPTER V

CONCLUSION

As reflected by the numerous legal cases and literature reviewed in this dissertation, religion and education have been a battleground for many years and are likely to continue to be so. Against this background, the focus of this study was to examine three different objectives. The first two objectives were to document the current level of superintendents' knowledge of litigation involving prayer and the public schools and to explore and describe patterns by applying quantitative methods to develop a profile of graduation prayer in Ohio. In this regard, the information obtained by this study provides some interesting insight into district superintendents' knowledge and beliefs relating to prayer at graduation ceremonies as well as the current status of graduation prayer in Ohio high schools. The final objective of this study was to report the data and recognize trends that lend themselves to developing future research questions.

Research Objectives

The three objectives of this study were to document the current level of superintendents' knowledge of litigation involving graduation prayer, describe patterns that exist in the demographic data, and to report data while looking for trends that lend themselves to developing future research questions. The following information addresses these objectives.

The descriptive statistics in this study highlight the current picture of Ohio superintendents in relation to their knowledge and beliefs in regard to graduation prayer. Much of the data provided by the survey was demographic in nature. Some of the more interesting statistics derived from the data are that of those who responded, females made up 17.4% of the sample, and males 82.6%, as noted in Table 1. When examining the respondents' religious affiliations it emerged that Protestants made up 64.1% of the sample with Catholics at 28.9%, those of the Jewish faith at 0.4% and those specifying their religion as "Other" at 6.6% (Table 3). In relation to those findings, Moore (2005) wrote that, "Protestants are most likely to favor school prayer (82%), followed closely by Catholics (75%)." With these two groups making up 93% of the respondent group, it could be understood why 41% of the districts still offered some type of graduation prayer.

In relation to national statistics on religious denominational membership, the findings of this study reveal that Ohio Superintendents reported similar demographics as those seen nationally. A national Gallup Poll reported in 2003 that 53% of Americans identified themselves as Protestant. In addition, 23% reported being Catholic with 2% adhering to the Jewish faith. This is very similar to the respondent demographics of 64.1% Protestant, 28.9% Catholic, and 0.4% Jewish (Table 3).

Further demographic statistical analysis indicated that the majority of respondents, 83.5%, as identified in Table 2, fell into either the age range of 46-55 or over 55. These statistics help to illustrate that the majority of our respondents were male, Protestant, and age 46 or older. These three descriptive statistics help to understand the superintendents that now lead Ohio's school districts.

When analyzing the location of the schools and their enrollment, Table 4 demonstrates that the respondents came from an assortment of district sizes with no one enrollment size dominating the others. When district location is examined, the majority of respondents represented rural schools, 61.7%, or suburban schools, 26.7% (Table 5). These statistics are comparable to national data, which listed rural districts as 75% and suburban districts as 20% of all U.S. school districts (U.S. Department of Education, n.d.).

An item that could appear to be an alarming statistic that surfaced from the first 10 questions was that 35.7% of participants had not taken any post-secondary courses on school law in the past 10 years (Table 8). However, data that help ease concerns, as shown in Table 9, are that 92.8% of the superintendents had more than two staff-development sessions (non-post secondary) on school law in the last 10 years while 68.6% had an in-service less than a year earlier, with another 21.8% in 2 years. It is important to note, according to these statistics, that even though they are not receiving the updates via traditional college coursework, educators should be aware of major legal issues in the education world.

Examining the statistics describing the graduation ceremonies in the school districts, 33.7% of boards offer formal baccalaureate ceremonies. Of these districts, 33.3% of these ceremonies are still conducted at the schools while 63.3% are held in local churches (Tables 11 & 12). Further, Table 14 indicates that formal graduation ceremonies are conducted in the majority of school districts with 96.2% of the respondents verifying this statement. Of those 249 school districts that held graduation ceremonies and responded to question #15, 103, or 41.4%, have prayers offered either

before, during, or after the graduation ceremony. The other 58.6% have no prayer whatsoever offered during the ceremonies (Table 15). Of those districts that have a graduation ceremony that included a prayer and responded to the survey, 80 had student-initiated/led prayer, 25 were led by a local religious leader, and two were administratively led. School administrators chose the prayer leader 22.9% of the time and students selected the speaker 54.3% of the time (Table 16). These statistics portray that graduation prayer in Ohio is held in many places, with prayer offered by different individuals, and those speakers are chosen by school officials or boards of education.

Superintendents also reported data on their knowledge of major court cases involving schools and religion as well as provided insight into their personal attitudes on the topic. One such statistic, as revealed by Table 19, is that 44.5% of the respondents indicated that the Constitution specifically uses the term 'separation of church and state.'

Even more striking is that 41% of respondents were familiar with the landmark case *Engel*, but only 50.3% understood the opinion of the Supreme Court (Table 20). Not surprisingly, the data reflected an eerily similar result when questioned on *Lee*. Many superintendents, 43.8%, responded that they were familiar with the case, yet only 54.2% understood the decision (Table 22). In other words, for every superintendent who claimed to be familiar with these cases, there was one who did not know the outcome, and therefore, was unaware of how it applies to their districts.

What is unusual is that even though the above data revealed some misunderstandings in the sample in relation to questions that ask about the Supreme Court's current stance on prayer, community input on prayer, and school-sponsored prayer, they overwhelmingly indicated that superintendents are either being cautious or

understand the relationship between prayer and schools on a broader scale than just at graduation ceremonies.

The last portion of the survey examined areas concerning the personal attitudes school superintendents had toward graduation prayer. Even though the majority of leaders responded that prayers could not occur at graduation unless student initiated and led, 41% of the respondents maintained that prayer should be offered during graduation. Yet, only 15% suggested it was a necessary part of the ceremony (Tables 29 & 31). Further, 79% of respondents indicated that they would not offer prayer at graduations even if their communities had no objections, 85.6% noted that their communities would have accepted prayers at graduations (Tables 26 & 32). Lastly, and possibly the most telling statistic, is that the majority (57.7%) of respondents stated that there should not be a separation of church and state in relation to prayer at graduation ceremonies (Table 33).

Analysis of Research Questions

The study focused on two research questions:

1. H_{a1} = There is a statistical relationship between prayer at the graduation ceremony (no prayer vs. prayer) and district size (1-1,000 vs. 1,001-2,000 vs. 2,001-3,000 vs. 3,000 or more).
2. H_{a2} = There is a statistical relationship between prayer at the graduation ceremony (no prayer vs. prayer) and district location (rural vs. urban vs. suburban vs. other).

For research question #1, the results of the chi-square were significant

$\chi^2(3) = 21.42, p < .001$, suggesting that a relationship does exist, and the null hypothesis was rejected. The results suggest that a larger proportion of participants did have a prayer ceremony compared to those that did not. A larger proportion from district size of 3,000

or more did not have a prayer ceremony compared to those that did, and a larger proportion from district size 1-1,000 did have a prayer ceremony compared to those that did not.

For research question #2, the results of the chi-square were significant $\chi^2(3) = 46.62, p < .001$, revealing that a relationship does exist and the null hypothesis was rejected. The results suggest that a larger proportion of participants did have a prayer ceremony compared to those that did not. A larger proportion from rural districts did have a prayer ceremony compared to those that did not, and a larger proportion from urban, suburban, and other districts did not have a prayer ceremony compared to those that did.

In relation to the two hypotheses tested, it appears that the larger a school district's enrollment, the harder it is for individual voices to be heard and the broader the board policies become to ensure legal protection. As discussed in chapter 2, religious entities founded many of these communities, which still follow much of the tradition and doctrine accepted in the local community. Even though the majority (61.7%) of respondents were from rural communities, it is apparent that many superintendents avoided prayer at commencement even though 85.6% still believe that their communities would accept it if offered.

Recommendations

School prayer is a minefield for school administrators, yet does not need to be so with the resources that exist. As evidenced by the data above, many superintendents have not taken school law staff development or classes in recent years even though they are expected to be experts in many areas of school operations. As the results of litigation

appear to fluctuate, and with the lower courts handing down differing decisions, the legal status of prayer in public schools can be a hard topic to comprehend. As a part of the research, there were gaps and resources that are now identified that may aid school officials.

The first suggestion for superintendents is that they stay abreast of current judicial decisions. Many of these updates are presented in professional journals. For example, the Ohio Association of Secondary School Administrators (OASSA), is an organization that publishes a newsletter providing legal updates on all areas of school law while identifying issues that have been currently decided and those that are still being litigated. A resource such as this is invaluable because it does the work of looking for updated information for the school administrator that is related and applicable to Ohio.

An additional tool for Ohio administrators is the Buckeye Association of School Administrators (BASA). Besides offering a wealth of tools and information, it also offers specific links related to legislative issues, the Ohio Revised Code and the Ohio Administrative Code. It is a wonderful, state-specific resource for administrators who want to stay abreast of the changing legal environment in Ohio.

Along with this recommendation of state specific information, it is also important to be aware of important national resources, including the Education Law Association, “a national, nonprofit association offering unbiased information about current legal issues affecting education and the rights of those involved in education in both public and private K-12 schools, universities, and colleges” (Education Law Association, 2009).

Another organization that provides advice to school administrators is the American Association of School Administrators (AASA). According to its Web site it is

“the professional organization for more than 13,000 educational leaders in the United States and throughout the world” (American Association of School Administrators, 2009).

The Ohio School Boards Association (OSBA) and the National School Boards Association (NSBA) are both excellent resources as well. Both of these organizations specialize in providing legal advice and resources for school boards in Ohio and across the nation, respectively. Both organizations work to follow court cases that impact public schools and to quickly and accurately disseminate information that districts need in order to stay abreast of the ever-changing legal decisions.

A second suggestion is to stay abreast of what is happening through the United States Department of Education. Its Web site is readily available on the Internet. This can be crucial depending on when the Department of Education ties needed funds to certain policies. School districts that miss this information could possibly be ineligible for federal funds.

A third suggestion is for school administrators to attend professional conferences, many of which are operated by the organizations identified in the recommendations, where legal updates are presented. If cost effectiveness is a concern, school boards could combine their resources and fund an expert in school law to present to the administrative teams and answer questions in relation to their current and potential board policies.

Lastly, school officials could present updated legal information to citizens in community newsletters. Many boards of education already have direct lines with citizens in their communities either through mail, email, phone, or public fora. This would be an opportunity to keep the public updated as well and display an open line of

communication between the school and the community that it serves. Schimmel hopes that school officials “would respond to these political challenges as good civics teachers by explaining to these parents or school board members why all of us-especially school officials-should obey court decisions with which we disagree” (1992, p. 928). Schimmel adds that “some school officials may ignore the ruling or publicly challenge it because they think it is wrong or because most parents and school board members want graduation prayers” (1992, p. 928). Although Schimmel made these statements 18 years ago, they still ring true today. Insofar as administrators do not agree with a decision by the courts, they must honor the courts’ right to decide judicial issues and to enforce those decisions on a local government level as an employee of the state government.

Limitations

One of the limitations of this research project was the 40.4% return rate. Using an electronic format, it was expected that the rate of return would be somewhat higher. In a 2001 study, Sheehan examined 31 separate studies that conducted research by sending out an electronic survey meant for data collection. The study found a mean return rate of 36.8%. The findings by Sheehan are consistent with the return rate found by this study and are indicative of an expected return rate. In order to improve reliability of the findings in this study, it is necessary to examine why the survey rate was not higher.

In retrospect, there are three possible explanations why this rate was 40.4%. First, as explained in chapter 2, religion has always been a personal belief. Few items have created more controversy in man’s time on the earth than religion. People have died, been persecuted, manipulated, and thrived in the name of religion. To this day, many people do not openly discuss religion except in a trusted circle of friends and family. It is

understood that some superintendents merely saw the topic involved with this study and decided that it was too controversial. Understandably, some communities are so engrained in their beliefs that superintendents who diverged from these beliefs may have found themselves, and their leadership abilities, in question. The possible result of this situation could be headaches for the district and possibly non-renewal of administrative contracts.

Second, another issue may have been that school districts use various email filters that could have eliminated the survey before it ever reached the superintendent's computer. As districts strive to keep computer viruses and spam email out of their servers, they have begun to tighten the parameters of their network filters. The researcher attempted to avoid this by using BASA to send the surveys out to the schools. In reflection, follow-up calls made to districts may have been beneficial to increasing the return rate but extremely time consuming due to the large number of schools in the population.

Third, leaders have less and less time as new mandates are written into law and schools become exponentially more complex. It would be understood if superintendents had too many other pressing issues before them that would better serve their students, staff, and communities and chose not to complete the online survey.

Recommendations for Further Study

Insofar as this study adds new data to the body of knowledge related to school graduation prayer, there are at least six avenues for further research. First, would be to conduct the survey with private non-religious schools versus private religious schools. Second, charter schools, even though they are public schools, might provide an

interesting insight to this type of study and would build upon this foundation research making it more three dimensional. Third, not only looking at other types of schools, but also geographic locations would prove to be interesting. Surely different geographic areas of the nation may view schools and religion differently from others. For example, the “Bible belt” of the South is likely to have different insight into these same questions than those who live in the Pacific Northwest or even in New England.

A fourth possible study would be to examine the attitudes toward graduation prayers of school board members. It is possible that administrators could be well versed in school law and the current legal precedent on school prayer in their geographic area and write policies that would not be approved by the boards for numerous reasons. School board members do not have to have any formal training in education or school law; as such, acting on their own personal beliefs could greatly influence policy in their district.

Further, a fifth research study could also be conducted by running additional statistical analyses on other variables by looking at correlations or the data in a cross-tabulation format. Regardless, the available data should reveal other relationships that may interest other educational researchers.

A sixth interesting study could revolve around the most staggering statistic in the study which was the lack of board policy with regard to prayer at graduation ceremonies. An alarming number of districts, 78.2%, stated that they did not have a board policy governing prayer at graduation. This statistic begs for more in-depth research to understand why there is a lack of such a policy. Without guidance by the board through written policies, the district opens itself up to possible litigation and inconsistencies in

relation to how prayers are or are not offered during important events. "Educators should adopt clear policies for reviewing challenges to the curriculum, and such policies should be enacted before a controversy arises" (McCarthy, 2001, p. 719).

Conclusion

A major focus of the study was to gather data to educate leaders. From these data, school officials can work to ensure that students' and community members' rights are protected at commencement ceremonies as well as to avoid costly litigation. An article wrote shortly after the decision in *Lee* still seems to provide the best current advice for school administrators. In his 1992 article, Schimmel, writes,

since the future of the Establishment Clause interpretation is uncertain, the safest legal approach for schools seeking to avoid constitutional challenge concerning school policies and practices is to be guided by the Court's general ruling in *Weisman*: Teachers and administrators should avoid any involvement with religion in the public schools that could appear to pressure students to participate—even if that pressure is subtle and indirect and even if the activity is nonsectarian. (p. 929)

It is the researcher's hope that through the presentation of the findings in this study, both school boards and researchers can help fill the gap between the decisions in court cases and the impact on school districts. The researcher also hopes that the findings of this study provide guidance to school boards as they attempt to develop solid policies based on current legal parameters, avoiding possible litigation.

Appendix A

SURVEY ON THE KNOWLEDGE OF AND ATTITUDES TOWARD GRADUATION PRAYER IN OHIO PUBLIC SCHOOLS

Nicholas B. Weldy
University of Dayton

The purpose of this survey is to gather information about graduation prayer in all of the public school districts in Ohio. **Please circle the answer that most accurately describes you, your school district, and your current graduation practices. Please remember that all of the data collected in this study is anonymous and please use no reference material when answering questions.**

Demographic Information

1. Gender:
 - a. Male
 - b. Female
2. Age:
 - a. Under 35
 - b. 36-45
 - c. 46-55
 - d. Over 55
3. Religious Denomination:
 - a. Catholic
 - b. Protestant
 - c. Jewish
 - d. Specify other: _____
4. Total District Enrollment:
 - a. 1-1000
 - b. 1,001-2,000
 - c. 2,001-3,000
 - d. 3,000 or more
5. District Location:
 - a. Rural
 - b. Urban
 - c. Suburban
 - d. Other _____

6. As a full-time teacher, I had _____ years of experience.
- a. 1-5
 - b. 6-15
 - c. 15-25
 - d. More than 25
7. As a full-time administrator, I have _____ years of experience.
- a. 1-5
 - b. 6-15
 - c. 15-25
 - d. More than 25
8. In the last 10 years, I have taken:
- a. No courses on school law
 - b. 1 Course on school law
 - c. 2 Or more courses on school law
9. In the last 10 years, I have attended:
- a. No staff development sessions on updates for school law
 - b. 1 staff development session on updates for school law
 - c. 2 or more staff development sessions on updates for school law
10. The last time I have taken a course or in-service involving school law was:
- a. Less than a year
 - b. 1-2 years ago
 - c. 3 years ago
 - d. 5 or more years ago

Graduation Practices

11. Does your school district conduct a Baccalaureate ceremony
- a. Yes
 - b. No
12. If you answered yes to #11, does the Baccalaureate take place:
- a. At the school
 - b. In a local church
 - c. In a local government building
 - d. Other: _____
13. If you answered yes to #11, does the baccalaureate take place:
- a. The night before the graduation ceremony.
 - b. The day of the graduation ceremony.
 - c. More than 1 day before the graduation ceremony.
 - d. Other: _____

14. Does your school have a formal commencement ceremony?
- a. Yes
 - b. No
15. If you have a formal commencement ceremony, is there a prayer immediately before, during, or after the ceremony?
- a. Before
 - b. During
 - c. After
 - d. No prayer
16. If you have a prayer during commencement, is it:
- a. Student initiated
 - b. Administratively led
 - c. Led by a local religious leader
 - d. Other _____
17. If you have a prayer, is the speaker chosen?
- a. By the school's administration
 - b. By the student body
 - c. By the Parent-Teacher Organization
 - d. Other: _____
18. Does your board have a policy governing prayer at graduation?
- a. Yes
 - b. No
 - c. Unsure

Knowledge of the Law Pertaining to School Prayer

19. The Constitution of the United States specifically uses the term 'separation of church and state'.
- a. Yes
 - b. No
20. I am familiar with the U.S. Supreme Court decision made in *Engel v. Vitale* (1962).
- a. Yes
 - b. No
21. Which statement generally best summarizes the U.S Supreme Court's holding in *Engel v. Vitale*?
- a. School-sponsored prayer in school is constitutional in all situations.
 - b. School-sponsored prayer in school is constitutional in some situations.
 - c. School-sponsored prayer in school is unconstitutional in all situations.

- d. School-sponsored prayer in school is unconstitutional in some situations.
22. I am familiar with the U.S. Supreme Court decision made in the case *Lee v. Weisman* (1992).
- a. Yes
 - b. No
23. Which statement best summarizes the court's holding in *Lee v. Weisman*?
- a. Prayer at graduation is at the discretion of the school board.
 - b. Prayer at graduation is at the discretion of the superintendent.
 - c. Prayer at graduation is constitutional if freely given by a student.
 - d. None are correct.
24. Prayer is acceptable at extracurricular activities:
- a. Yes
 - b. No
25. Which statement best describes the Supreme Court's current stance on prayer?
- a. Prayer during the school day is at the discretion of the school board.
 - b. Prayer during the school day is at the discretion of the superintendent.
 - c. Prayer during the school day is at the discretion of the building principal.
 - d. Prayer during the school day is at the discretion of the student.
26. Prayer at graduation is acceptable if the community has no objections?
- a. Yes
 - b. No
27. Prayer at graduation is acceptable if the *majority* of the community has no objections?
- a. Yes
 - b. No

Your Attitudes Toward School Prayer

28. Prayer at graduation is acceptable if approved by the board of education?
- a. Yes
 - b. No

29. Graduation prayer should be included:
- a. Never
 - b. Sometimes
 - c. Only in special situations
 - d. Always
30. Prayer at graduation differs from prayer at a baccalaureate ceremony?
- a. Yes
 - b. No
31. Prayer is a necessary part of a graduation ceremony?
- a. Yes
 - b. No
32. My community would accept a prayer at graduation.
- a. Yes
 - b. No
33. Do you agree that there should be a separation of church and state in relation to prayer at graduation ceremonies?
- a. Yes
 - b. No
34. Does the language of the first amendment of the United States Constitution explicitly call for the "wall of separation between church and state"?
- a. Yes
 - b. No

Once again, *thank you* for your time and information. It will be put to good use!

Appendix B

From: Charles Russo [mailto:charles_j_russo@hotmail.com]
Sent: Thursday, May 17, 2007 7:58 PM
To: Weldy, Nick
Subject: Survey

Hi Nick,

Responses from Ralph Mawdsley. Make sure to save this.

Charlie

From: *Ralph Mawdsley* <ralph_d_mawdsley@yahoo.com>
To: *Charles Russo* <charles_j_russo@hotmail.com>
Subject: *Re: FW: Survey*
Date: *Thu, 17 May 2007 14:43:51 -0700 (PDT)*

Charlie,

Some possible changes:

21 - I do not understand the statement - I think that words have been transposed, and, in any case, what is the purpose of the question?

23 - Replace "in this case" with "Engel v. Vitale"

26 - Should you use "the Supreme Court's" in place of "court's"?

27, 28 - Would "objections" be more clear than "issues"?

Not clear whose "Attitudes Toward Prayer" is intended - should "Your" precede "Attitudes"?

34 - If "separation of church and state" does not exist in # 20, why is it used in # 34?

35 - Nothing in the survey prepares those surveyed for the terms used.

Ralph

Appendix C

From: "McCarthy, Martha" <mccarthy@indiana.edu>
To: "Charles Russo" <charles_j_russo@hotmail.com>
Subject: FW: Survey
Date: Thu, 24 May 2007 17:52:10 -0400

Charlie,

As promised, I did review the survey and think it basically looks good! I've made some notes using track changes. Please tell your student to feel free to contact me if he has questions about my notes.

Best wishes,
Martha

Martha McCarthy
Chancellor's Professor and Chair
Educational Leadership and Policy Studies
Education 4230
Indiana University
Bloomington, IN 47405
(812) 856 8384

From: Charles Russo [mailto:charles_j_russo@hotmail.com]
Sent: Thursday, May 17, 2007 3:48 PM
To: McCarthy, Martha
Subject: FW: Survey

Many thanks, Martha,

Charlie

From: "Weldy, Nick" <WeldyN@milton-union.k12.oh.us>
To: "Charles Russo" <charles_j_russo@hotmail.com>
Subject: Survey
Date: Wed, 16 May 2007 15:29:56 -0400

Here you go! Thanks and have a great night!

Nicholas Weldy
Assistant High School Principal
Milton-Union High School
(937) 884-7947
weldyN@milton-union.k12.oh.us

The universe is full of magical things, patiently waiting for our wits to grow sharper.

~Eden Phillpotts~

Information included in this email may be confidential or sensitive. Please treat it appropriately.

><< Survey5-16-2007SentToValidate.doc >>

Appendix D

Nick,

I have a few comments that may or may not be helpful.

Question 3 - I wondered why you specifically listed "Baptist" instead of the more generic "Protestant." I'm sure it may have something to do with the particular demographics in your area. Here in MA, the Protestant churches are pretty much equally divided up among several sub-denominations and to list one without the other major churches could offend someone. I also wondered why you didn't also list Episcopal. I know you have the "other" category but felt you should list the major denominations. Again, your reason for doing it this way may have much to do with the demographics in your area.

Questions 8 & 9: Given how quickly school law changes I wonder if you should put a "time limit" on these questions i.e. "In the last 10 years I have attended." Anything older than that is no longer relevant.

Baccalaureate Questions: I'd also suggest a question regarding who takes part in the ceremony, i.e. local clergy, school staff, etc.

In noticed an error in Question 26. The question refers to current stance on graduation prayer but the answers all refer to prayer during the school day.

Question 28 also may have an error in wording. Should it be "has no objections?"

One other suggestion – I'd also be interested in a couple of questions regarding prayer at other solemn school events such as a Memorial Day observance. However, this may be beyond the scope of your study.

Good luck with the survey.

Allan

----- Original Message -----

From: Weldy, Nick

To: allan_osborne@verizon.net

Cc: Charles Russo

Sent: Tuesday, May 22, 2007 11:36 AM

Subject: Survey

Dr. Osborne,

Here is a copy of my survey. Thank you so much for taking the time to read it and offer suggestions! Have a great day!

Nicholas Weldy

Appendix E

INVOCATION PRAYER

God of the Free, Hope of the Brave:

For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.

For the liberty of America, we thank You. May these new graduates grow up to guard it.

For the political process of America in which all its citizens may participate, for its court system where all may seek justice we thank You. May those we honor this morning always turn to it in trust.

For the destiny of America we thank You. May the graduates of Nathan Bishop Middle School so live that they might help to share it.

May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.

AMEN

(*Lee, 1992, p. 581-582*)

BENEDICTION PRAYER

O God, we are grateful to You for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.

Happy families give thanks for seeing their children achieve an important milestone. Send Your blessings upon the teachers and administrators who helped prepare them.

The graduates now need strength and guidance for the future, help them to understand that we are not complete with academic

knowledge alone. We must each strive to fulfill what You require of us all: To do justly, to love mercy, to walk humbly.

We give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion.

AMEN

(*Lee*, 1992, p. 478-479)

Appendix F

Archived: Secretary's Statement on Religious Expression

<http://www2.ed.gov/Speeches/08-1995/religion.html>



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UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

"...Schools do more than train children's minds. They also help to nurture their souls by reinforcing the values they learn at home and in their communities. I believe that one of the best ways we can help out schools to do this is by supporting students' rights to voluntarily practice their religious beliefs, including prayer in schools.... For more than 200 years, the First Amendment has protected our religious freedom and allowed many faiths to flourish in our homes, in our work place and in our schools. Clearly understood and sensibly applied, it works."

President Clinton
May 30, 1998

Dear American Educator,

Almost three years ago, President Clinton directed me, as U.S. Secretary of Education, in consultation with the Attorney General, to provide every public school district in America with a statement of principles addressing the extent to which religious expression and activity are permitted in our public schools. In accordance with the President's directive, I sent every school superintendent in the country guidelines on Religious Expression in Public Schools in August of 1995.

The purpose of promulgating these presidential guidelines was to end much of the confusion regarding religious expression in our nation's public schools that had developed over more than thirty years since the U.S. Supreme Court decision in 1962 regarding state sponsored school prayer. I believe that these guidelines have helped school officials, teachers, students and parents find a new common ground on the important issue of religious freedom consistent with constitutional requirements.

In July of 1996, for example, the Saint Louis School Board adopted a district wide policy using these guidelines. While the school district had previously allowed certain religious activities, it had never spelled them out before, resulting in a lawsuit over the right of a student to pray before lunch in the cafeteria. The creation of a clearly defined policy using the guidelines allowed the school board and the family of the student to arrive at a mutually satisfactory settlement.

In a case decided last year in a United States District Court in Alabama,

(*Chandler v. James*) involving student initiated prayer at school related events, the court instructed the DeKalb County School District to maintain for circulation in the library of each school a copy of the presidential guidelines.

The great advantage of the presidential guidelines, however, is that they allow school districts to avoid contentious disputes by developing a common understanding among students, teachers, parents and the broader community that the First Amendment does in fact provide ample room for religious expression by students while at the same time maintaining freedom from government sponsored religion.

The development and use of these presidential guidelines were not and are not isolated activities. Rather, these guidelines are part of an ongoing and growing effort by educators and America's religious community to find a new common ground. In April of 1995, for example, thirty-five religious groups issued "Religion in the Public Schools: A Joint Statement of Current Law" that the Department drew from in developing its own guidelines. Following the release of the presidential guidelines, the National PTA and the Freedom Forum jointly published in 1996 "A Parent's Guide to Religion in the Public Schools" which put the guidelines into an easily understandable question and answer format.

In the last two years, I have held three religious-education summits to inform faith communities and educators about the guidelines and to encourage continued dialogue and cooperation within constitutional limits. Many religious communities have contacted local schools and school systems to offer their assistance because of the clarity provided by the guidelines. The United Methodist Church has provided reading tutors to many schools, and Hadassah and the Women's League for Conservative Judaism have both been extremely active in providing local schools with support for summer reading programs.

The guidelines we are releasing today are the same as originally issued in 1995, except that changes have been made in the sections on religious excusals and student garb to reflect the Supreme Court decision in *Boerne v. Flores* declaring the Religious Freedom Restoration Act unconstitutional as applied to actions of state and local governments.

These guidelines continue to reflect two basic and equally important obligations imposed on public school officials by the First Amendment. First, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity. Generally, this means that students may pray in a nondisruptive manner during the school day when they are

not engaged in school activities and instruction, subject to the same rules of order that apply to other student speech.

At the same time, schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity. Among other things, of course, school administrators and teachers may not organize or encourage prayer exercises in the classroom. Teachers, coaches and other school officials who act as advisors to student groups must remain mindful that they cannot engage in or lead the religious activities of students.

And the right of religious expression in school does not include the right to have a "captive audience" listen, or to compel other students to participate. School officials should not permit student religious speech to turn into religious harassment aimed at a student or a small group of students. Students do not have the right to make repeated invitations to other students to participate in religious activity in the face of a request to stop.

The statement of principles set forth below derives from the First Amendment. Implementation of these principles, of course, will depend on specific factual contexts and will require careful consideration in particular cases.

In issuing these revised guidelines I encourage every school district to make sure that principals, teachers, students and parents are familiar with their content. To that end I offer three suggestions:

First, school districts should use these guidelines to revise or develop their own district wide policy regarding religious expression. In developing such a policy, school officials can engage parents, teachers, the various faith communities and the broader community in a positive dialogue to define a common ground that gives all parties the assurance that when questions do arise regarding religious expression the community is well prepared to apply these guidelines to specific cases. The Davis County School District in Farmington, Utah, is an example of a school district that has taken the affirmative step of developing such a policy.

At a time of increasing religious diversity in our country such a proactive step can help school districts create a framework of civility that reaffirms and strengthens the community consensus regarding religious liberty. School districts that do not make the effort to develop their own policy may find themselves unprepared for the intensity of the debate that can engage a community when positions harden around a live controversy involving religious expression in public schools.

Second, I encourage principals and administrators to take the additional step of making sure that teachers, so often on the front line of any

dispute regarding religious expression, are fully informed about the guidelines. The Gwinnett County School system in Georgia, for example, begins every school year with workshops for teachers that include the distribution of these presidential guidelines. Our nation's schools of education can also do their part by ensuring that prospective teachers are knowledgeable about religious expression in the classroom.

Third, I encourage schools to actively take steps to inform parents and students about religious expression in school using these guidelines. The Carter County School District in Elizabethton, Tennessee, included the subject of religious expression in a character education program that it developed in the fall of 1997. This effort included sending home to every parent a copy of the "Parent's Guide to Religion in the Public Schools."

Help is available for those school districts that seek to develop policies on religious expression. I have enclosed a list of associations and groups that can provide information to school districts and parents who seek to learn more about religious expression in our nation's public schools.

In addition, citizens can turn to the U.S. Department of Education web site (<http://www.ed.gov>) for information about the guidelines and other activities of the Department that support the growing effort of educators and religious communities to support the education of our nation's children.

Finally, I encourage teachers and principals to see the First Amendment as something more than a piece of dry, old parchment locked away in the national attic gathering dust. It is a vital living principle, a call to action, and a demand that each generation reaffirm its connection to the basic idea that is America -- that we are a free people who protect our freedoms by respecting the freedom of others who differ from us.

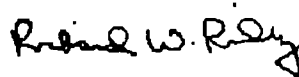
Our history as a nation reflects the history of the Puritan, the Quaker, the Baptist, the Catholic, the Jew and many others fleeing persecution to find religious freedom in America. The United States remains the most successful experiment in religious freedom that the world has ever known because the First Amendment uniquely balances freedom of private religious belief and expression with freedom from state-imposed religious expression.

Public schools can neither foster religion nor preclude it. Our public schools must treat religion with fairness and respect and vigorously protect religious expression as well as the freedom of conscience of all other students. In so doing our public schools reaffirm the First Amendment and enrich the lives of their students.

I encourage you to share this information widely and in the most appropriate manner with your school community. Please accept my

sincere thanks for your continuing work on behalf of all of America's children.

Sincerely,



Richard W. Riley
U.S. Secretary of Education

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

Student prayer and religious discussion: The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school

administrators should ensure that no student is in any way coerced to participate in religious activity.

Graduation prayer and baccalaureates: Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

Teaching about religion: Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

Student assignments: Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance, and against other legitimate pedagogical concerns identified by the school.

Religious literature: Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

Religious excusals: Subject to applicable State laws, schools enjoy substantial discretion to excuse individual students from lessons that are

objectionable to the student or the students' parents on religious or other conscientious grounds. However, students generally do not have a Federal right to be excused from lessons that may be inconsistent with their religious beliefs or practices. School officials may neither encourage nor discourage students from availing themselves of an excusal option.

Released time: Subject to applicable State laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

Teaching values: Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb: Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no Federal right to be exempted from religiously-neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

THE EQUAL ACCESS ACT

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

General provisions: Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

Prayer services and worship exercises covered: A meeting, as defined and protected by the Equal Access Act, may include a prayer service,

Bible reading, or other worship exercise.

Equal access to means of publicizing meetings: A school receiving Federal funds must allow student groups meeting under the Act to use the school media – including the public address system, the school newspaper, and the school bulletin board – to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school sponsored.

Lunch-time and recess covered: A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

Revised May 1998

List of organizations that can answer questions on religious expression in public schools

Religious Action Center of Reform Judaism

Name: Rabbi David Saperstein
Address: 2027 Massachusetts Ave., NW, Washington, DC 20036
Phone: (202) 387-2800
Fax: (202) 667-9070
Web site: <http://www.rj.org/rac/>

American Association of School Administrators

Name: Andrew Rotherham
Address: 1801 N. Moore St., Arlington, VA 22209
Phone: (703) 528-0700
Fax: (703) 528-2146
Web site: <http://www.aasa.org>

American Jewish Congress

Name: Marc Stern
Address: 15 East 84th Street, New York, NY 10028
Phone: (212) 360-1545
Fax: (212) 861-7056

National PTA

Name: Maribeth Oakes
Address: 1090 Vermont Ave., NW, Suite 1200, Washington, DC

20005
Phone: (202) 289-6790
Fax: (202) 289-6791
Web site: <http://www.pta.org>

Christian Legal Society

Name: Steven McFarland
Address: 4208 Evergreen Lane, #222, Annandale, VA 22003
Phone: (703) 642-1070
Fax: (703) 642-1075
Web site: <http://www.clsnet.com>

National Association of Evangelicals

Name: Forest Montgomery
Address: 1023 15th Street, NW #500, Washington, DC 20005
Phone: (202) 789-1011
Fax: (202) 842-0392
Web site: <http://www.nae.net>

National School Boards Association

Name: Laurie Westley
Address: 1680 Duke Street, Alexandria, VA 22314
Phone: (703) 838-6703
Fax: (703) 548-5613
Web site: <http://www.nsba.org>

Freedom Forum

Name: Charles Haynes
Address: 1101 Wilson Blvd, Arlington, VA 22209
Phone: (703) 528-0800
Fax: (703) 284-2879
Web site: <http://www.freedomforum.org>

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Appendix G

Secretary's Letter on Constitutionally Protected Prayer in Public Elemen... http://www2.ed.gov/policy/gen/guid/religionandschools/letter_200302...



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GENERAL

Secretary's Letter on Constitutionally Protected Prayer in Public Elementary and Secondary Schools

FEBRUARY 7, 2003

Dear Colleague:

As part of the implementation of the No Child Left Behind Act of 2001 (NCLB), I am issuing guidance today on constitutionally protected prayer in public elementary and secondary schools. The purpose of this guidance is to provide State educational agencies (SEAs), local educational agencies (LEAs) and the public with information on this important topic. The guidance also sets forth and explains the responsibilities of SEAs and LEAs with respect to this aspect of the NCLB Act. Most significantly, as a condition of receiving funds under the Elementary and Secondary Education Act (ESEA), an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The guidance clarifies the rights of students to pray in public schools. As stated in the guidance, "...the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals" such as students. Therefore, "[a]mong other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities." Public schools should not be hostile to the religious rights of their students and their families.

At the same time, school officials may not "compel students to participate in prayer or other religious activities." Nor may teachers, school administrators and other school employees, when acting in their official capacities as representatives of the state, encourage or discourage prayer, or participate in such activities with students.

In these challenging times, it is more important than ever to recognize the freedoms we have. I hope that this guidance can contribute to a common understanding of the meaning of the First Amendment in the public school setting. I encourage you to distribute this guidance widely in your community and to discuss its contents and importance with school administrators, teachers, parents, and students.

Sincerely,

Rod Paige

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- Money for college
- Research, best practices
- Facts and figures
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Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools

February 7, 2003

INTRODUCTION

Section 9524 of the Elementary and Secondary Education Act ("ESEA") of 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, Section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency ("LEA") must certify in writing to its State educational agency ("SEA") that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The purpose of this guidance is to provide SEAs, LEAs, and the public with information on the current state of the law concerning constitutionally protected prayer in the public schools, and thus to clarify the extent to which prayer in public schools is legally protected. This guidance also sets forth the responsibilities of SEAs and LEAs with respect to Section 9524 of the ESEA. As required by the Act, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law. It will be made available on the Internet through the Department of Education's web site (www.ed.gov). The guidance will be updated on a biennial basis, beginning in September 2004, and provided to SEAs, LEAs, and the public.

THE SECTION 9524 CERTIFICATION PROCESS

In order to receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. An LEA must provide this certification to the SEA by October 1, 2002, and by October 1 of each subsequent year during which the LEA participates in an ESEA program. However, as a transitional matter, given the timing of this guidance, the initial certification must be provided by an LEA to the SEA by March 15, 2003.

The SEA should establish a process by which LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

By November 1 of each year, starting in 2002, the SEA must send to the Secretary a list of those LEAs that have not filed the required certification or against which complaints have been made to the SEA that the LEA is not in compliance with this guidance. However, as a transitional matter, given the timing of this guidance, the list otherwise due November 1, 2002, must be sent to the Secretary by April 15, 2003. This list should be sent to:

Office of Elementary and Secondary Education
Attention: Jeanette Lim
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The SEA's submission should describe what investigation or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary, but should maintain these records in accordance with its usual records retention policy.

ENFORCEMENT OF SECTION 9524

LEAs are required to file the certification as a condition of receiving funds under the ESEA. If an LEA fails to file the required certification, or files it in bad faith, the SEA should ensure compliance in accordance with its regular enforcement procedures. The Secretary considers an LEA to have filed a certification in bad faith if the LEA files the certification even though it has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

The General Education Provisions Act ("GEPA") authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. Such measures may include withholding funds until the recipient comes into compliance. Section 9524 provides the Secretary with specific authority to issue and enforce orders with respect to an LEA that fails to provide the required certification to its SEA or files the certification in bad faith.

OVERVIEW OF GOVERNING CONSTITUTIONAL PRINCIPLES

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination. ^[1] The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. Thus, in discussing the operation of Section 9524 of the ESEA, this guidance sometimes speaks in terms of "religious expression." There are a variety of issues relating to religion in the public schools, however, that this guidance is not intended to address.

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. ^[2] Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment's scope. As the Court has explained in several cases, "there is a crucial difference between **government** speech endorsing religion, which the Establishment Clause forbids, and **private** speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." ^[3]

The Supreme Court's decisions over the past forty years set forth principles that distinguish impermissible governmental religious speech from the constitutionally protected private religious speech of students. For example, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities. ^[4] Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities. ^[5] Such conduct is "attributable to the State" and thus violates the Establishment Clause. ^[6]

Similarly, public school officials may not themselves decide that prayer should be included in school-sponsored events. In *Lee v. Weisman* ^[7], for example, the Supreme Court held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony. Nor may school officials grant religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech. In *Santa Fe Independent School District v. Doe* ^[8], for example, the Court invalidated a school's football game speaker policy on the ground that it was designed by school officials to result in pregame prayer, thus favoring religious expression over secular expression.

Although the Constitution forbids public school officials from directing or favoring prayer, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." ^[9] and the Supreme Court has made clear that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." ^[10] Moreover, not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech. ^[11] For example, "nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day," ^[12] and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Likewise, local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities, ^[13] but they may not structure or administer such rules to discriminate against student prayer or religious speech. For instance, where schools permit student expression on the basis of genuinely neutral criteria and students retain primary control over the content of their expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the state and therefore may not be restricted because of its religious content. ^[14] Student remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience. ^[15] As the Supreme Court has explained: "The proposition that schools do not endorse everything they fail to censor is not complicated," ^[16] and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression. ^[17]

APPLYING THE GOVERNING PRINCIPLES IN PARTICULAR CONTEXTS

Prayer During Noninstructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

Organized Prayer Groups and Activities

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Teachers, Administrators, and other School Employees

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

Moments of Silence

If a school has a "minute of silence" or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on federal or state constitutional law or pursuant to state statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. Schools officials are therefore encouraged to consult with their attorneys regarding such obligations.

Religious Expression and Prayer in Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.

Student Assemblies and Extracurricular Events

Student speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a

basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Baccalaureate Ceremonies

School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

NOTES:

[1] The relevant portions of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech" U.S. Const. amend. I. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—federal, state, and local—and to all types of governmental policies and activities. See *Everson v. Board of Educ.*, 330 U.S. 1 (1947); *Cantwell v. Connecticut*, 310 U.S. 296 (1940). [[Return to text](#)]

[2] See, e.g., *Everson*, 330 U.S. at 18 (the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them"); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001). [[Return to text](#)]

[3] *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); accord *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819, 841 (1995). [[Return to text](#)]

[4] *Engel v. Vitale*, 370 U.S. 421 (1962) (Invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (Invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens*, 496 U.S. at 252 (plurality opinion) (explaining that "a school may not itself lead or direct a religious club"). The Supreme Court has also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (e.g., in history or literature classes), is consistent with the First Amendment. See *Schempp*, 374 U.S. at 225. [[Return to text](#)]

[5] See *Lee v. Weisman*, 505 U.S. 577, 599 (1992); see also *Wallace v. Jaffree*, 472 U.S. 38 (1985). [[Return to text](#)]

[6] See *Weisman*, 505 U.S. at 587. [[Return to text](#)]

[7] 505 U.S. 577 (1992). [[Return to text](#)]

[8] 530 U.S. 290 (2000). [[Return to text](#)]

[9] *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). [[Return to text](#)]

[10] *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). [[Return to text](#)]

[11] *Santa Fe*, 530 U.S. at 302 (explaining that "not every message" that is "authorized by a government policy and take[s] place on government property at government-sponsored school-related events" is "the government's own"). [[Return to text](#)]

[12] *Santa Fe*, 530 U.S. at 313. [[Return to text](#)]

[13] For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683-86 (1986). Without more, however, such review does not make student speech attributable to the state. [[Return to text](#)]

[14] *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819 (1995); *Board of Educ. v. Mergens*, 496 U.S. 226 (1990); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Santa Fe*, 530 U.S. at 304 n.15. In addition, in circumstances where students are entitled to pray, public schools may not restrict or censor their prayers on the ground that they might be deemed "too religious" to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they "nonsectarian" and "nonproselytizing" or the opposite—over others. See *Engel v. Vitale*, 370 U.S. 421, 429-30 (1962) (explaining that "one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services," that "neither the power nor the prestige" of state officials may "be used to control, support or influence the kinds of prayer the American people can say," and that the state is "without power to prescribe by law any particular form of prayer"); *Weisman*, 505 U.S. at 594. [[Return to text](#)]

[15] *Santa Fe*, 530 U.S. at 302; *Mergens*, 496 U.S. at 248-50. [[Return to text](#)]

[16] *Mergens*, 496 U.S. at 250 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment). [[Return to text](#)]

[17] *Rosenberger*, 515 U.S. at 845-46; *Mergens*, 496 U.S. at 248 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment). [[Return to text](#)]

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Last Modified: 09/15/2003

Appendix H

1-22-2008

Dear Ohio Educator,

Like you, I am an Ohio educator working with students, parents, and my community every day. I am also a Doctoral Candidate at the University of Dayton studying attitudes about school prayer in Ohio schools. Did you realize that little is known about the extent to which prayer is part of Ohio high school commencement ceremonies? I am conducting this survey to fill that void.

Would you be so kind as to complete the online survey about yourself, your schools, and your school district's graduation practices? Only with your input and the input of others like you in other schools can I complete this study of *all* school districts in Ohio. I would very much appreciate your taking 10 minutes of your busy day to complete this brief survey. Of course, completing the survey is voluntary on your part and you can stop your participation at any time. Your responses are confidential and will only be viewed by myself. Only data about groups of schools will be reported; no reporting on individual administrators or individual schools will be done. There is no way for responses to be traced back to you. *Please complete the survey as soon as possible to guarantee it will be included in this important study!*

I would be very glad to share the results of my study with you when the research is completed. If you are interested in those results, please send me an email with your request and I will forward my abstract.

If you have any questions, feel free to contact me at nweldy@mvctc.com or my dissertation chair, Dr. Charles Russo, at charles.russo@notes.udayton.edu. Questions about your legal rights as a participant in research can be addressed to Jon Nieberding,

UD IRB chair, at jon.nieberding@udri.udayton.edu or (937) 229-4053. Thank you for your time and input, I very much appreciate your participation in this important study about one of the most crucial issues facing contemporary administrators today.

Sincerely,

Nicholas B. Weldy

Appendix I



16 January 2008

Mr. Nick Weldy
University of Dayton
Dayton, OH

SUBJECT: "Knowledge of and Attitudes Towards Graduation
Prayer in Ohio Public Schools"

Dear Mr. Weldy:

The Institutional Review Board for the Protection of Human Subjects in Research has reviewed the subject proposal. The proposed research protocol is exempt from human subject regulations as described in 45 CFR 46.101(b)(2). The procedures you have designed to protect participant confidentiality and to secure informed consent are adequate and conform to accepted ethical standards for this type of research.

Therefore, you have approval to proceed with the study. The Committee expects that the appropriate subject protection measures will be followed, as outlined in your proposal.

Please inform the Committee of any ethical issues that may arise in your study. Please feel free to contact me should you encounter other issues relevant to the protection of human subjects. Good luck with your research.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon Nieberding", is written above the typed name.

Jon Nieberding
IRB Chair

INSTITUTIONAL
REVIEW BOARD FOR
THE PROTECTION OF
HUMAN SUBJECTS IN
RESEARCH

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